

PORT OF GREATER BATON ROUGE



COMPLIANCE AUDIT

ISSUED FEBRUARY 1, 2006

**LEGISLATIVE AUDITOR
1600 NORTH THIRD STREET
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February 1, 2006

MR. JAY G. HARDMAN
INTERIM EXECUTIVE DIRECTOR
PORT OF GREATER BATON ROUGE
Baton Rouge, Louisiana

We have audited certain transactions of the Port of Greater Baton Rouge in accordance with Title 24 of the Louisiana Revised Statutes. Our audit was performed to determine the propriety of certain transactions relating to compensatory time, expense reimbursements, deferred compensation, and donations.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*; therefore, we are not offering an opinion on the Port's financial statements or system of internal control nor assurances as to compliance with laws and regulations.

The accompanying report presents our findings and recommendations as well as management's response. Copies of this report have been delivered to those parties as required by state law.

Respectfully submitted,

Steve J. Theriot, CPA
Legislative Auditor

SDP:JLM:DGP:dl

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Mr. Roger Richard, the executive director of the Port of Greater Baton Rouge (Port), accrued 3,361 hours of compensatory time based on estimated work hours including promotional lunches and dinners, traveling, and entertaining after-hours; was reimbursed for expenses that were not documented in accordance with Port policy or were improper; received at least \$6,240 more in Port matching deferred compensation payments than the Commission authorized; and may have improperly donated Port funds in violation of the Louisiana Constitution.¹ While the Port established policy regarding compensatory time, the policy is silent as it regards the Port's unclassified employees and is not specific as to when compensatory time may be earned. In addition, though Port policy requires employee time records to be approved by a supervisor, Mr. Richard's time records were not submitted to nor reviewed by the Board of Commissioners (Commission), his supervisor.

Mr. Richard's Contracts

Mr. Richard became executive director effective July 1, 1998. His initial salary was \$96,000 and increased to \$106,000 effective July 1, 1999. Effective January 1, 2000, his salary increased to \$130,000 and further increased to \$140,000, \$160,000, \$172,000, and \$177,985 effective January 1 of 2001, 2002, 2003, and 2004, respectively.

Mr. Richard's contract provided for expense reimbursements to include mileage at the effective rate for the Port. Effective July 1, 1999, a \$500 monthly car allowance was added to Mr. Richard's contract in addition to the mileage reimbursement. His monthly allowance was increased to \$600 effective January 1, 2000, and to \$1,000 effective January 1, 2003.

Mr. Richard's contract provided for accruing 14 hours of sick and 14 hours of annual leave per month.

Mr. Richard originally was given a two-year contract that was renegotiable annually. In 2000, the length of the contract was extended to December 31, 2004, and extended to December 31, 2008, effective January 1, 2001. The Commission placed Mr. Richard on paid administrative leave effective July 29, 2005. As of this date, Mr. Richard remains on paid leave.

Compensatory Time

Compensatory time is compensation, in the form of paid leave, for overtime worked. Such leave is used at a later date in lieu of sick or annual leave. According to the Port's policy, classified employees are allowed to earn compensatory time; Port policy does not address compensatory time for its unclassified employees. In addition, the Port's policy does not provide specifics as to when compensatory time is earned relating to travel, entertainment, promotional activities, and weekends. For example, the policy does not state whether an employee earns compensatory time while promoting the Port during lunch or flying abroad. According to the Commission, since at least 1992, without its knowledge, Port practice was to allow unclassified workers including the executive director to earn compensatory time.

¹ **Article 7, Section 14 of the Louisiana Constitution** provides, in part, that except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

From January 1992 through June 1998, Mr. Gary Pruitt, then the executive director of the Port, recorded 16 hours of compensatory time. On July 1, 1998, Mr. Richard, an unclassified employee, replaced Mr. Pruitt. Mr. Richard's employment contract stipulates that he receives the same benefits as classified employees. From July 1, 1998, through June 5, 2005, Mr. Richard recorded as earned 3,361 hours of compensatory time and recorded as taken 2,224 hours. In addition, Mr. Richard approved the earning of compensatory time for four other unclassified employees whom he supervised. Upon discovering the amount of compensatory time recorded by Mr. Richard and the other unclassified employees, the Commission terminated their participation in earning compensatory time and eliminated their compensatory time balances.

Mr. Richard's compensatory time included lunches, dinners, traveling, and for after-hours entertaining at conventions. From February 19, 2003, through April 21, 2004, Mr. Richard reported working 1,292 hours in travel status: 540 of these hours was compensatory time.

From November 1, 2003, through November 9, 2003, which included two weekends, Mr. Richard claimed 40 hours of straight time and 73 hours of compensatory time. During this period, Mr. Richard visited Belgium and Holland on Port business. He traveled on November 1, 2003, and returned on November 8, 2003. Forty of the 73 hours of compensatory time occurred on the two days of travel. Mr. Richard stated that when he travels on Port business, he is being deprived of being with his family and sleeping in his own bed. Therefore, he feels that he should be compensated for all of the time that he is separated from his family.

According to Port policy, employees must maintain an accurate record of hours worked and a supervisor must approve this record. According to Mr. Richard, his hours were not precisely tracked on a daily basis but rather roughly estimated biweekly. In a written communication, Mr. Richard stated,

. . . All directors did not maintain a time sheet each and every day, but rather completed one every two weeks; by reviewing one's appointment book and making a calculated guess at the times in and out. It was important but not an exact science, because none of us (Exempt Directors) **HAD** to keep a time sheet. I was not an **HOURLY** employee, worked hours as required and did not have to keep a time sheet, it was **NOT** necessary.

- i. I insisted on maintaining a time sheet for myself and my exempt staff, in order for us to be accountable. I never insisted or expected anyone's time sheet to be an exact science, but a close approximation of time worked . . .

The Port provided no evidence that Mr. Richard's time sheets were submitted by Mr. Richard to the Commission, his supervisor, for review and approval. Neither were we provided evidence that the Commission requested to examine Mr. Richard's time sheets. Had the Commission been afforded the opportunity to review Mr. Richard's time sheets, the Commission may have made a determination as to the appropriateness of the hours claimed.

We contacted the Port of New Orleans, the Port of South Louisiana, the Port of Shreveport, and the Greater Lafourche Port Commission in an effort to determine the practice of similar ports. Based on information provided, Mr. Richard is the only executive director in this group to earn compensatory time for working more than a 40-hour week, working weekends and attending luncheons, dinners, and conventions and meetings.

Commission members Larry Johnson, Carter Wilkinson, Charles Thibaut, and Charles D'Agostino stated that the Commission was not aware of Mr. Richard earning compensatory time and would not have approved it had the Commission known.

We recommend:

1. Accurate and certified time records should be maintained for all employees earning compensatory time.
2. A supervisory authority should review and approve all claims for compensatory time to determine the need and the accuracy of the time being claimed, including the claims of unclassified employees.
3. The Port should consult legal counsel on the legitimacy of Mr. Richard's remaining leave balances.
4. The Port should draft a detailed compensatory time policy specifying when employees can earn compensatory time including expectations for meals, travel, and conventions.

Reimbursements

Mileage Reimbursements

According to his employment contract, Mr. Richard received a \$1,000 per month automobile allowance as well as mileage reimbursements equal to the Internal Revenue Service rate, which includes the cost of servicing the vehicle, gasoline, and depreciation. Mr. Richard's contract also specifies, in part, that expense reimbursement is contingent upon his presenting such evidence of the expenses as the Port may require. The Port's travel policy states in part, that "... All mileage shall be compensated on the basis of odometer readings from the point of origin to the point of destination and return. . . ." This procedure is not included in Mr. Richard's contract.

Over the 28-month period reviewed, Mr. Richard was reimbursed for 29 separate requests that claim 13,505 miles traveled for a total mileage reimbursement of \$5,029. He claimed mileage for such activities as driving to lunch and dinner and to the office on non-work days. During this period, Mr. Richard submitted odometer readings on one occasion.

Mr. Richard stated that he did not usually record odometer readings, because he knows how many miles it is to the places that he normally goes. He did not address why he did not use odometer readings for places that he does not normally go.

Club Membership Reimbursements

The Port's policy, Section 9, provides that Port funds may not be used for Commission or staff membership in dining clubs; financial support by means of advertising, promotion, contribution for or to organizations such as the March of Dimes, Special Olympics, Lupus Foundation, Cancer Fund, Heart Association, Cystic Fibrosis, United Way, Shrine Circus, and law enforcement agencies; and sponsorship of such events as cocktail receptions. Over a 29-month period, Mr. Richard received reimbursement of \$2,639 for his dues to the Camelot Club, \$40 for his contributions to the Camelot Club's Christmas Fund, and \$1,527 for sponsoring four non-Port related events at the Camelot Club. Of the events sponsored, \$167 was spent on a Boy Scout function and \$613 for entertainment of a Canadian delegation associated with the Louisiana Airport Authority of which Mr. Richard is a board member.

Golf Tournament Sponsorship Reimbursements

Port policy, Section 9.b.3, specifically prohibits use of Port funds for sponsorship of all or part of any golf tournament. Mr. Richard was reimbursed \$100 twice for the same sponsorship of a golf tournament. On June 16, 2003, Mr. Richard personally paid The Chamber of Greater Baton Rouge \$100 for hole-sponsorship for its May 19th golf tournament. Mr. Richard submitted this receipt on two separate expense reimbursements and was paid twice: once on July 23, 2005, and again on September 2, 2003.

Inadequate Documentation Reimbursements

Mr. Richard did not submit itemized receipts for reimbursements of expenses made to his credit card. During our examination, Mr. Richard voluntarily released his credit card provider to make available detailed records of his charges. While we did not receive details for all charges, from that received we were able to document the purchase of \$393 of alcohol over a 29-month period. While the Louisiana Attorney General has previously opined (A.G. Opinion No. 02-0125) that the purchase of alcoholic drinks for customers of a Port is acceptable where the cost is reasonable, we noted that documentation indicating that these purchases related to Port customers existed for only \$41 of the \$393.

Personal Expense Reimbursements

Through a personal check dated May 7, 2005, Mr. Richard refunded the Port \$90.59 for two meals that he was reimbursed for in December 2003. Mr. Richard stated that when he learned his expense reports would be audited, he reviewed the expense reports and determined the reimbursed meals were actually personal expenses and not Port business. The receipts for both meals were accompanied by memorandums documenting their business purpose. Mr. Richard explained that he keeps his business expense folder and personal folders next to each other, and the personal receipts were mistakenly placed in the business folder. He did not explain why he produced a memorandum documenting the business purpose of personal meals consumed on a vacation day and a Saturday.

The Commission president is responsible for reviewing and approving the chief executive officer's (CEO) expense reimbursements. During the period January 2003 through May 2005, Mr. Johnson, Mr. Thibaut, and Mr. Wilkinson were presidents during the period and approved Mr. Richard's requests for reimbursement. All three presidents stated they trusted Mr. Richard and signed the reimbursement requests with only a cursory review. Had the Commission reviewed Mr. Richard's reimbursement requests, it could have made a proper determination on the appropriateness of the requests.

We recommend:

1. The Port comply with its policy by requiring documented mileage from all employees before reimbursement.
2. The Port comply with its policy of prohibiting reimbursement for dining club memberships, financial support for civic related entities, and sponsorship of cocktail receptions.
3. The Commission president thoroughly review the CEO's requests for reimbursements to ensure the requests are eligible for reimbursement in accordance with Port policy.
4. The Port require detailed receipts and develop a definitive policy covering Port reimbursement for alcoholic drinks.
5. The Port should reevaluate the cost/benefits of paying the executive director both a \$1,000 per month car allowance and mileage reimbursement for actual mileage driven.

Deferred Compensation

On September 28, 2000, the Commission approved a deferred compensation plan that provided for a Port matching contribution of 5% of employee salaries to a maximum of \$4,000. The Port's maximum participation was increased without Commission approval to \$4,250, \$5,500, \$6,000, and \$6,500 for 2001, 2002, 2003, and 2004, respectively.

Mr. Richard stated that he was unaware the Port maximum contribution was increased. He acknowledged that he had signed off on the increase from \$4,250 to \$5,500 for 2002, but was not aware of the other increases. According to the Commission, it was not aware of these increases nor did it approve the increases.

From September 2000 through December 2004, three of approximately 32 employees benefited from the unauthorized increased contributions. The cumulative amount received in excess of the authorized \$4,000 per annum was \$811 for Mr. Greg Johnson, \$819 for Mr. Jay Hardman, and \$6,240 for Mr. Richard. On January 13, 2006, Mr. Johnson and Mr. Hardman reimbursed the Port the excess contributions.

We recommend the maximum contributions authorized by the Commission be reinstated and any over-payments be recovered from Mr. Richard.

Improper Donations

Article 7, Section 14 of the Louisiana Constitution prohibits the donation of public assets. Public entities can enter into cooperative endeavor agreements to carry out public business through other entities, provided:

- (1) the expenditure or transfer of public funds or property is based on a legal obligation or duty;
- (2) the expenditure is for a public purpose; and
- (3) the expenditure creates a public benefit proportionate to its cost.²

During 2004 and 2005, the Port made payments of \$66,807 to private entities. Mr. Richard entered into cooperative endeavor agreements for \$39,417 of these payments. We reviewed the cooperative endeavor agreements provided to us and could not always conclude the expenditures were based on a legal obligation/duty, for a public purpose, and created public benefit proportionate to the cost. For example, on July 1, 2004, Mr. Richard entered into an agreement to pay the Istrouma Area Council Boy Scouts \$10,000 for sponsorship of the “School Night Out Program.” While the Port has the authority to promote its services, we found no documentation showing the benefits were proportionate to the cost paid. Furthermore, this payment appears to conflict with the Port’s policy prohibiting the use of Port funds to provide financial support for such organizations by means of advertisement and promotion.

On April 7, 2004, Mr. Richard entered into an agreement to provide \$1,000 to Cancer Services of Greater Baton Rouge for its 22nd Capital Chefs Showcase. The agreement provides:

The CSGBR shall use its best efforts to utilize the necessary and requisite time, staff and resources to inform, educate and promote all interested parties/potential members and general public of the GBRPC of the availability of all port facilities and port tour program, and all other related matters concerning the GBRPC so as to promote and educate its membership and other groups, recruit and retain commerce, industry and trade within the parishes of East Baton Rouge . . .

There is no evidence in the documentation provided demonstrating that Cancer Services of Greater Baton Rouge could provide services beneficial to the Port, commensurate with the \$1,000 paid. In addition, this agreement appears to conflict with the Port’s policy, Section 9, as previously discussed.

² Attorney General Opinion 01-0389

FINDINGS AND RECOMMENDATIONS

The Port could not provide cooperative endeavor agreements for \$27,390 of these expenditures. Absent written agreements, there is no documentation that these expenditures were based on a legal obligation/duty, for a public purpose, and created public benefit proportionate to the cost.

We recommend the Commission seek legal opinions on the validity of all its cooperative endeavor agreements, prepare supportive documentation where needed, prepare written agreements for those where no agreement currently exists, and cease any improper donations of public funds and/or violation of Port policy.

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The Greater Baton Rouge Port Commission was established by Act 9 of the regular session of the 1952 Legislature of Louisiana, adopted as an amendment to the Constitution of Louisiana as Section 29, Article VI, thereof, and was created as an Executive Department (now a political subdivision) of the State of Louisiana. The governor appoints the members of the board of commissioners. The commission has the power and authority to regulate the commerce and traffic within certain boundaries of the State of Louisiana and has charge of and administers public wharves, docks, sheds, landings, and other structures useful for the commerce of the port area.

The Legislative Auditor received information of certain improprieties committed by the chief executive officer. The procedures performed during this audit consisted of (1) interviewing employees of the Port; (2) examining selected records of the Port; (3) performing analytical tests; and (4) reviewing applicable Louisiana laws.

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Management's Response



PORT OF GREATER BATON ROUGE

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January 10, 2006

Steve J. Theriot, CPA
Legislative Auditor
1600 North Third Street
Baton Rouge, Louisiana 70802

RE: Compliance Audit Report - Port of Greater Baton Rouge

Dear Mr. Theriot:

The Greater Baton Rouge Port Commission acknowledges receipt of the initial draft of the Compliance Audit Report on the Port of Greater Baton Rouge. Port staff, the Port's Attorney, and the Commission president have reviewed the report and submit the following information in response to your specific recommendations. In each instance, we have restated your recommendation and then provided the Port's response to that recommendation. In most cases, the Port has already taken remedial or corrective action to address the issue involved. The Port's response is as follows:

COMPENSATORY TIME

RECOMMENDATION NO. 1: That accurate and certified time records be maintained for all employees earning compensatory time.

RESPONSE: Accurate and certified time records have been and will continue to be maintained for all classified (hourly) Port employees earning compensatory time. Compensatory time for unclassified (salaried) Port employees was never authorized by the Commission. However, upon learning that it was being claimed, the Port Commission terminated compensatory time for the Chief Executive Officer on April 28, 2005, and by subsequent related action taken by the Chief Executive Officer compensatory time for all other unclassified employees was terminated. Once these actions were taken, there was no longer any Port employee earning compensatory time who was not maintaining accurate and certified time records. Therefore, the Port is now in full compliance with this recommendation.

RECOMMENDATION NO. 2: That a supervisory authority review and approve all claims for compensatory time to determine the need and the accuracy of the time being claimed, including the claims of exempt employees.

RESPONSE: Supervisory personnel at the Port have and will continue to review and approve all claims for compensatory time to determine the need and accuracy for the time being claimed by all classified Port employees. As regards unclassified employees, the Commission members did not authorize compensatory time for unclassified employees and they were never informed that Mr. Richard nor any of the other unclassified employees were claiming compensatory time. Mr. Richard was a salaried employee and not an hourly employee. Because of this fact, the Commission members were totally unaware that Mr. Richard needed to keep or actually kept time sheets. He never presented his time sheets to the Commission president for approval as was done for all expense reimbursement forms. However, once the Commission members determined that Mr. Richard and other unclassified employees were claiming compensatory time they immediately took action and the compensatory time for Port unclassified (salaried) employees was terminated by action of the Port Commission on April 28, 2005, and by subsequent related action taken by the Chief Executive Officer. Once these actions were taken, all Port employees earning compensatory time have supervisory personnel reviewing and approving their time to determine the need and accuracy thereof, and the Port is in full compliance with this recommendation.

RECOMMENDATION NO. 3: That the Port consult legal counsel on the legitimacy of Mr. Richard's remaining leave balances.

RESPONSE: The Port's legal counsel will review the legitimacy of Mr. Richard's remaining leave balances as you recommend and all appropriate adjustments will be made.

REIMBURSEMENTS

Your office has made the observation "Had the Commission properly reviewed Mr. Richard's reimbursement requests, they could have made a proper determination on the appropriateness of the requests." This statement begs the question: Who was in the best position to prevent the problem from occurring - Mr. Richard or the Commission President?

The Commission submits that the answer is clear. Without any question or doubt, Mr. Richard was in the best position. He should not have submitted any improper requests for reimbursement.

While it is true that each acting Commission president was responsible for and did review and approve the Chief Executive Officer's expense reimbursement request, Mr. Richard, as the Chief Executive Officer in charge of the day-to-day operations of the Port was charged with and had the responsibility to only submit requests for reimbursement that were in all respects, proper and in accordance with Port policy and procedure. As the Chief Executive Officer, Mr. Richard was charged with the proper implementation of all Port policies and procedures, especially those directly relating to and affecting him. As noted throughout the audit report, Mr. Richard repeatedly failed in this responsibility. Until recently, the Commission had no cause or reason to question Mr. Richard's practices. Once the Commission learned of Mr. Richard's practices, they took immediate action, some of which are noted herein.

A. MILEAGE REIMBURSEMENTS

RECOMMENDATION: That the Port comply with its policy by requiring documented mileage from all employees before reimbursement.

RESPONSE: It has been and will continue to be Port policy that odometer readings be submitted with Port employees' requests for mileage reimbursement. Based on available Port records the only Port employee not adhering to this policy was Mr. Richard. In the future, no Port employee, including but not limited to the Chief Executive Officer, will be reimbursed for mileage unless and until the request therefor is properly supported by odometer readings.

B. CLUB MEMBERSHIP REIMBURSEMENT

RECOMMENDATION: That the Port examine its policy and seek restitution for amounts improperly paid to Mr. Richard.

RESPONSE: The Port has confirmed that its policy prohibits reimbursement for dining club memberships and intends to seek restitution for all improper requests for reimbursement made by Mr. Richard.

C. GOLF CLUB TOURNAMENT SPONSORSHIP REIMBURSEMENT

RECOMMENDATION NO. 1: That the Port implement policies and procedures to prevent duplicate reimbursement and reimbursements for improper expenditures.

RESPONSE: The Port has confirmed that its policy prohibits reimbursements for golf tournament sponsorships and intends to seek recovery of all sums paid to or for the benefit of Mr. Richard as a result of his improper and duplicate request for payment. Port procedures are already in place to prevent duplicate invoices from being paid. In this instance, Mr. Richard requested and received a personal reimbursement for the sponsorship (even though he had not yet paid the Chamber for the sponsorship) and then two months later he improperly authorized direct payment to the Chamber for the same sponsorship for which he had already been paid but never tendered to the Chamber.

RECOMMENDATION NO. 2: That the Port seek recovery of the \$200.00 erroneously reimbursed to Mr. Richard.

RESPONSE: The Port intends to seek recovery of all improper requests for reimbursement made by Mr. Richard, including but not limited to the \$200.00 for golf club sponsorship.

D. INADEQUATE DOCUMENTATION

RECOMMENDATION: That the Port require detailed receipts and develop a definitive policy covering Port reimbursement for alcohol.

RESPONSE: By action of the Port Commission on June 23, 2005 the Commission terminated the use of all personal credit cards and required the use of credit cards issued in the name of the Port Commission so that the Port will now have control of the credit card account. Furthermore, the Commission mandated that all reimbursable expenses to Port employees be reviewed by the Finance Committee and submitted to the full Commission for approval. Any request for reimbursement not properly supported by proper detailed receipts will not be approved.

The Port Commission will review and address the issue of developing a definitive policy covering the reimbursement for alcohol.

E. PERSONAL EXPENSES

This section of the Legislative Auditor's report requires no response by the Port.

F. DEFERRED COMPENSATION

RECOMMENDATION: That the maximum contributions authorized by the Commission be reinstated and the over payments be recovered from the appropriate employees. In addition, it is recommended that any unauthorized contributions beyond December 2004 also be recovered.

RESPONSE: On September 28, 2000 the Commission established a deferred compensation program with a maximum annual employer contribution of \$4000.00 per employee. Subsequently, on an annual basis from 2001 through 2005, Mr. Richard, without authorization from, and without the knowledge of the Commission, approved contributions in excess of this \$4000.00 limitation, which initially benefitted only Mr. Richard. Currently, there are three Port employees that have received these unauthorized overpayments. Two of those employees, Mr. Hardman and Mr. Johnson, have already refunded all overpayments of deferred compensation. The Commission will seek recovery of all deferred compensation overpayments to Mr. Richard.

The Commission policy regarding the deferred compensation program has never changed; therefore, there is no need for the Commission to "reinstate" the maximum contribution. However, Port policy and procedures have been reviewed and emphasized with appropriate Port personnel to insure that such improper overpayments do not occur in the future.

G. IMPROPER DONATIONS

RECOMMENDATION: That the Commission seek legal opinions on the validity of all its cooperative endeavor agreements and cease the improper donations of public funds.

RESPONSE No. 1: As noted in the Auditor's report, there appear to be numerous improper donations of public funds in violation of Article 7, Section 14 of the Louisiana Constitution. Some of these donations are supported by cooperative endeavor agreements and some are not. However, the mere existence of a cooperative endeavor agreement does not necessarily legitimize an otherwise improper donation of public funds. All of

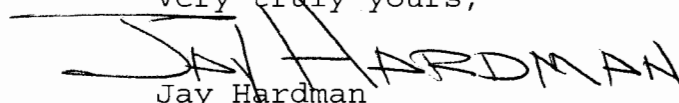
the improper donations of public funds reviewed by the auditors (whether supported by cooperative endeavor agreements or not) were made by Mr. Richard without the knowledge or approval of the Commission. The Port by-laws gave the Chief Executive Officer the authority to expend up to \$10,000.00 without Board approval . . . "in order to carry out the policies or projects of the Commission." (Hereinafter "Discretionary Expenditures") However, as the Chief Executive Officer he had a duty and obligation to insure that all Port expenditures, especially Discretionary Expenditures which did not require Commission approval, complied with all applicable laws, rules, regulations and constitutional authority. Mr. Richard violated this duty and failed in this obligation. The Commission intends to recover all funds from Mr. Richard which are determined to be improper donations of public funds.

Steps have already been implemented by the Commission to prevent any further improper expenditures of public funds in the nature of a donation. At a meeting of the full Commission on June 23, 2005 the Commission voted to discontinue all Discretionary Spending by the Chief Executive Officer without prior approval of the Commission. As a result of this action, expenditures that might be considered a donation must now come before the entire Commission for review, consideration and approval. This necessarily means that Port legal counsel will have the opportunity to review and provide a legal opinion in advance of any such expenditure if there is any doubt or question regarding its propriety.

Response No. 2: On September 22, 2005, the Commission approved and forwarded a resolution requesting a legal opinion from the Louisiana Attorney General on the validity of all Discretionary Expenditures that the Commission felt could be considered prohibited donations, whether said expenditures were supported by cooperative endeavor agreements or not. As of the date of this response, the Commission has not received an opinion from the Attorney General.

The above information is submitted in response to the Legislative Auditors draft report on the Port of Greater Baton Rouge. Should you need additional information or response, please contact us.

Very truly yours,


Jay Hardman
Acting Chief Executive Officer



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January 13, 2006

Mr. Dan Daigle
Office of Legislative Auditor
P. O. Box 94397
Baton Rouge, LA 70804-9397

Re: Roger Richard

Dear Mr. Daigle:

On behalf of Roger Richard, I am writing in response to the preliminary draft of the Compliance Audit Report on the Greater Baton Rouge Port Commission sent to me on January 5, 2006. Therein, you cite the following allegations of violations of Port policy by Mr. Richard:

1. Accrual of compensatory time based on estimated work hours without the knowledge or approval of the Commission.
2. Reimbursement for expenses that were not documented in accordance with Port policy or were improper.
3. Receipt of \$6,240 more in Port matching deferred compensation payments than the Commission authorized.
4. Improper donation of Port funds in violation of the Louisiana Constitution.

As set forth below, Mr. Richard did not violate Port policy or act without the approval of the Port Commission. Therefore, these allegations are unfounded and without merit.

I. Compensatory Time:

Importantly, as acknowledged in the preliminary draft, even before Mr. Richard was hired as Executive Director and Chief Executive Officer, it had been the ongoing practice of the Port to allow unclassified workers, including the Chief Executive Officer, to earn compensatory time. In accordance with this practice, Mr. Richard, along with other unclassified employees, accrued compensatory time on a straight rate (or hour for hour rate).

It is alleged that, according to the Port's policy, only classified employees of the Port are entitled to receive compensatory time. It is also alleged that, according to the Port's policy, employees are required to precisely track a record of hours worked on a daily basis and obtain supervisor's approval. To the contrary, the Compensatory Leave policy in effect at the time Mr.

BR:671532.1

Richard began his tenure makes no distinction between classified and unclassified employees and is completely void of such a timesheet requirement. (Port Policy and Procedures Manual, Compensatory Leave Policy, attached hereto as Exhibit "A").

Make no mistake, Mr. Richard is entitled to compensatory time in accordance with Louisiana law, and specifically in accordance with the terms of his Employment Contract. The Employment Contract of Mr. Richard as Executive Director and Chief Executive Officer of the Port of Greater Baton Rouge specifically entitles Mr. Richard to "[p]articipation in *all* Port, State and/or Civil Service sponsored benefits afforded Port employees including, but not limited to, holidays, insurance, retirement, annual and sick leave, each of such leave benefits . . ." and "[s]uch other benefits as may be hereafter provided." (Emphasis added). (Employment Contract, Paragraph (B)(2) and (3), attached hereto as Exhibit "B"). Therefore, although Mr. Richard held an unclassified position, pursuant to the Employment Contract, he was entitled to the benefits set forth in the Louisiana Civil Service Rules.

Chapter 21 of the Louisiana Civil Service Rules governs overtime and overtime compensation, including the availability of compensatory time. As an exempt employee (as defined by the Fair Labor Standard Act), Mr. Richard was to be compensated pursuant to Louisiana Civil Service Rules for State Overtime found in Rule 21.7. See La. Civil Service Rules 21.2, 21.3.

Louisiana Civil Service Rules 21.7 and 21.9 set forth the definition of "State Overtime" to which exempt employees are entitled, and the rate of compensation for same, respectively, stating:

21.7 Definition of State Overtime

When an employee is not eligible for overtime under the provisions of the FLSA, State Overtime shall be granted as follows:

* * *

(b) STATE OVERTIME is work performed by an employee *at the direction of the appointing authority* or his designee:

1. In excess of the employee's regularly scheduled workday.
2. In excess of the employee's regularly scheduled work period.
3. On a holiday, including designated holidays
4. During official closures

21.9 Compensation Rate – Exempt Employees.

The appointing authority shall compensate exempt employees in accordance with one of the following options:

- (a) No overtime compensation
- (b) Compensation at the straight (hour for hour) rate
- (c) Overtime performed during official closures due to emergency situations may be compensated at the time and one-half rate.
- (d) Compensation at the time and one-half rate may be granted to exempt employees upon Commission¹ approval.

(La. Civil Service Rules 21.7, 21.9) (Emphasis added).

Since Mr. Richard's compensatory time as accrued was at the straight (hour for hour) rate, such compensatory time did not require the approval of the State Civil Service Commission, but could be authorized by Mr. Richard as the "appointing authority." The term "appointing authority" is defined as follows:

'Appointing Authority' means the agency, department, board, or commission, *and the officers and employees thereof* authorized by statute or by lawfully delegated authority to make appointments to positions in the State Service. (Emphasis added).

(La. Civil Service Rule 1.4).

The By-laws of the Port provide that the Executive Director and Chief Executive Officer has control over "all classified and unclassified employees of the Commission. . . and shall fix the duties, powers and compensation of all personnel and employees in such departments, subject to such Civil Service requirements as may be hereafter established by state law." (By-laws, Article X, Paragraph 2, attached hereto as Exhibit "C". According to Rule 1.4 and the By-laws of the Port, Mr. Richard was the "appointing authority" at whose direction State Overtime could be authorized.

Additionally, the hours of compensatory time accrued by Mr. Richard meet the definition of State Overtime as work performed in excess of his regularly scheduled workday or work week as set forth in Rule 21.7. The hours that Mr. Richard spent at work related dinners, conventions, and

¹"Commission" is defined as the State Civil Service Commission. La. Civil Service Rule 1.9.

traveling qualify as work performed in excess of his regular work period. At his discretion as Executive Director, Mr. Richard was eligible to earn compensatory time.

Mr. Richard's entitlement to compensatory time was confirmed by discussions of Port Commission on both April 28, 2005, and May 26, 2005. In the Minutes of the Greater Baton Rouge Port Commission meeting held on April 28, 2005, the Commission discussed compensatory time. (April 28, 2005 Minutes, Agenda Item 11). Mr. Alfred Starns, Director of Finance and Administration for the Port, was the individual employed by the Port primarily responsible for Civil Service matters. Mr. Starns was questioned regarding the authority of the Executive Director regarding compensatory time, and stated:

Mr. Starns said comp time is basically overtime. It has been within the Civil Service system I guess since early on. Generally, comp time, I don't think previous executive directors earned comp time, or not much. ***That's because the executive director has discretion as to whether he pays comp time or doesn't pay comp time, or whether he lets you earn it or not earn it. It's his discretion.***

* * *

Mr. Wilkinson said A1, is that something the Commission can do or is that the discretion of the executive director.

Mr. Ishmael said we are fixing to take it with the Commission.

Mr. Starns said Commission can set policy.

Mr. Ishmael said we are going to set policy. It is something we need to control.

Mr. Starns said Right now there is basically no policy. It is wide open, based on the executive director's discretion.

(Emphasis added). (April 28, 2005 Minutes, Page 10-11, attached hereto as Exhibit "C").

In the Minutes of the Greater Baton Rouge Port Commission meeting held on May 26, 2005, the Commission discussed Mr. Richard's contract regarding compensatory leave and benefits. (May 26, 2005 Minutes, Agenda Item 14). Mr. Wilkinson (legal counsel for the Port) recognized that Paragraph (B)(2)² of Mr. Richard's Employment Contract could cover compensatory time. (May 26,

² Paragraph (B)(2) of the Employment Contract states Mr. Richard is entitled to "[p]articipation in all Port, State and/or Civil Service sponsored benefits afforded Port employees including but not limited to, holidays, insurance, retirement, annual and sick leave, each of such leave benefits . . ."

2005 Minutes, page 12), and the Commission contemplated changing the language of this paragraph of the Employment Contract to add “entirely new” language to specifically state that the CEO is not entitled to compensatory leave. (May 26, 2005 Minutes, page 13, attached hereto as Exhibit “E”).

In the meeting on May 26, 2005, the Commission rescinded Mr. Richard’s accumulated compensatory time. (May 26, 2005 Minutes, page 18). As set forth above, pursuant to Mr. Richard’s Employment Contract and the Louisiana Civil Service Rules, Mr. Richard was entitled to earn compensatory time for hours worked in excess of his regular work period. Thus, the Commission’s actions in stripping him of his accumulated compensatory time deprived him of a constitutionally protected property right. *Knecht v. Board of Trustees for State Colleges and Universities and Northwestern State University*, 91-0751 (La. 12/2/91), 591 So.2d 690; *Finley v. Department of Transportation and Development*, 93-1710 (La.App. 1 Cir. 6/24/94), 639 So.2d 431.

In *Knecht*, unclassified employees sued their former employer for compensatory time accrued pursuant to a compensatory time policy that, similar to the Port’s policy, did not distinguish between classified and unclassified positions. A representative of the Board testified that it became aware by either newspaper reports or audit reports of the accumulation of compensatory time by unclassified employees and decided that compensatory time would no longer be granted to unclassified employees. The Supreme Court held that where the Board’s agents had put in place a set of procedures whereby employees earned and accrued leave commensurate with overtime worked, these actions evinced consent by the Board to compensate the employees for the overtime worked. When the employees worked overtime, such actions constituted acceptance of the Board’s offer of compensation, forming a binding contract. *Knecht*, 591 So.2d at 695-6.

In *Finley*, the Court examined a long standing policy of the Legal Section of the Department of Transportation and Development for an unwritten, informal system by which attorneys were provided one hour of compensatory time for one hour of overtime worked based on records maintained by the attorneys. After a new written policy was implemented, DOTD refused to recognize accumulated compensatory time. The Court recognized that:

The [section’s] compensatory time policy, though unwritten, was well known and routinely followed. It constituted a legally protectable tacit contract with the employees subject to it. Thus plaintiff had a property right in his compensatory time accrued under the policy which allowed for unlimited accrual. [Citations omitted.] The discontinuation of the ‘latitude’ system and the refusal by the Department to recognize Finley’s previously accumulated overtime deprived him of a

constitutionally protected property right. Finley is entitled to recover his earned compensatory time.

Finley, 639 So.2d at 433.

Upon either Mr. Richard's resignation or termination, the Port is obligated to timely pay him all amounts due, including any accumulated compensatory time. Therefore, should the Port refuse to timely pay him his accumulated compensatory time that was wrongfully rescinded by the Port, the Port will be in violation of Louisiana's Wage Payment Law, La. R.S. 23:631, *et seq.* An employer who fails to comply with the statute is liable for penalties in the amount of either for ninety days wages at the employee's daily rate of pay, or else for full wages from the time the employee's demand for payment is made until the employer pays the amount of unpaid wages due to such employee, whichever is the lesser amount, as well as attorneys' fees should Mr. Richard be forced to file suit.

Finally, it is interesting to note that the Office of the Legislative Auditor, during an investigative audit in May 2001, examined the accumulation of compensatory time by unclassified employees. However, no recommendation of changing the policy was made by the OLA.

Based on the language of his Employment Contract and prior Commission practice even preceding Mr. Richard's tenure with that entity, Mr. Richard was entitled to accumulate compensatory time in accordance with the Louisiana Civil Service Rules. This fact was recognized by the Commission in its April 2005 and May 2005 meetings. The Commission's actions in attempting to rescind Mr. Richard's accumulated compensatory leave was a breach of its contractual obligations to him and deprived him of his constitutionally protected property rights.

II. Reimbursements:

A. Mileage Reimbursements

It is alleged that Mr. Richard wrongfully received reimbursements for both mileage and a monthly car allowance. These reimbursements were appropriate pursuant to Mr. Richard's Employment Contract. Mr. Richard's Employment Contract provided for both reimbursement of mileage for use of his automobile, and a monthly car allowance, stating:

4. The Executive Director and Chief Executive Officer shall be reimbursed for any expenses incurred by him in the course of the discharge of any duty as Executive Director and Chief Executive Officer. This includes mileage for the use of a personal automobile at the rate authorized. Such reimbursement

shall be contingent upon the Executive Director and Chief Executive Officer's keeping records for such expenses and presenting such evidence of the expenses as The Port may require or as may be required by law with approval of the Commission President.

5. The Executive Director and Chief Executive Officer shall receive a monthly car allowance of ONE THOUSAND AND NO/100 (\$1000.00) DOLLARS during the term of this contract, subject to renegotiation annually.

(Employment Contract, Paragraphs (B)(4), (B)(5)).

It is also alleged that Mr. Richard's Employment Contract required the submittal of odometer readings pursuant to the Port's Travel Policy. To the contrary, the Employment Contract does not specifically require the submittal of odometer readings or require compliance with the Port's Travel Policy. It simply requires that Mr. Richard keep records of such expenses and present such evidence as the Port may require. Indeed, Mr. Richard submitted requests for reimbursements showing relevant information such as the dates of travel, purpose of the request, and mileage reimbursement requested. Mr. Richard's requests for reimbursement were approved by the Commission President, and he was provided reimbursements for these amounts. At no time was Mr. Richard requested by the Commission to provide odometer readings or comply with the Travel Policy of the Port's Policy and Procedure Manual.

B. Club Membership Reimbursements

It is alleged that Mr. Richard joined the Camelot Club in violation of Port policy prohibiting reimbursement for dining club memberships. Mr. Richard did join the Camelot Club, paid no initiation fee, and was billed monthly for membership dues. Mr. Richard paid his membership dues, as well as the Christmas fund, from his personal funds and with a personal check. Subsequently, Mr. Richard submitted these expenses for reimbursement on his expense account. The Commission President approved these expense requests and reimbursed Mr. Richard for these expenses without ever questioning or rejecting such expenses. Mr. Richard's membership in and use of the Camelot Club was appropriate inasmuch as it was utilized for purposes of promoting and developing industry, trade and commerce that was of vital interest to the Port.

It is alleged that Mr. Richard was reimbursed for sponsoring "non-Port related events" at the Camelot Club, including a Boy Scout function and entertainment of a Canadian delegation. Mr. Richard's actions in sponsoring these events were in accordance with the Port's authority pursuant to La. R.S. 51:1201. Louisiana Revised Statute 51:1201 allows parishes, municipalities and port authorities to promote the development of industry, trade and commerce within and for their

jurisdictions, and to associate with one another to that end. Furthermore, La. R.S. 51:1201 states that “parishes, municipalities, and port authorities may advertise by various means including but not limited to news media, trade journals, magazines, and billboards *and any other means which, in their judgment and discretion, they deem appropriate* to promote, encourage, and develop industry trade, and commerce.”³ The statute allows the Port to exercise its discretion to determine the “other” means to promote, encourage, and develop industry, trade and commerce. La. Atty. Gen. Op. No. 01-0472.

As recognized by statute, the Port was created for the benefit of the State and is to regulate the commerce and traffic within the Port area in such a manner as may, in its judgment, be for the best interest of the State. See La. R.S. 34:1223. The Attorney General recognized that this statutory authority creates a duty for the Port to develop commerce, and legitimate expenditures are an inherent part of that duty. La. Atty. Gen. Op. No. 02-0125.

The Attorney General has recognized the right to advertise or spend funds to promote the development of industry, trade and commerce, even in the absence of a cooperative endeavor agreement. See La. Atty. Gen. Op. No. 02-0157 (Rapides Parish Policy Jury may use public funds for “Jazz on the River” sponsored by a private, nonprofit corporation if participation is to promote

³**La. R.S. 51:1201. Promotion by parishes, municipalities, and port authorities**

A. The parishes, municipalities, and port authorities created in accordance with the constitution and laws of the state of Louisiana are hereby authorized to promote the development of industry, trade, and commerce within and for their respective jurisdictions and to associate with one or more parishes, municipalities, or port authorities for the purpose of promoting industry, trade, and commerce within the area of the several political subdivisions joined together or associated for this purpose. To this end, parishes, municipalities, and port authorities may advertise by various means including but not limited to news media, trade journals, magazines, and billboards and any other means which, in their judgment and discretion, they deem appropriate to promote, encourage, and develop industry, trade, and commerce. In addition, they may establish and become members in councils chartered by the state as nonprofit corporations for the purpose of industrial, trade, and commercial development.

B. Such councils shall be governed by boards comprised of members appointed by the governing authorities of the participating political subdivisions and shall make public their expenditures for advertising and promotion by means of annual reports audited by a certified public accountant.

C. Parishes, municipalities, and port authorities may appropriate and expend public funds in the furtherance of the promotion of industry, trade, and commerce, either directly or by membership in the aforesaid councils.

D. A port authority which has not experienced a deficit in the previous year may additionally appropriate out of current income from its operations a local promotion and development fund of not more than two percent of its gross income from operations in each calendar year for use in its respective jurisdictional boundaries.

and develop local industry through advertisement); La. Atty. Gen. Op. No. 01-0472 (City of Scott is authorized to purchase cups and beads with City's name and/or logo to be thrown in the City's Mardi Gras parade if it finds it will promote, encourage and develop industry, trade and commerce).

Even more on point, the Attorney General has evaluated the legality of expenditures of the Port of New Orleans in light of La. R.S. 51:1201 in similar instances. The Attorney General recognized that La. R.S. 51:1201 creates an exception to the general rule that advertising is prohibited, stating:

We turn now to the subject of advertising. While our law generally prohibits the use of public funds for advertising, R.S. 51:1201 constitutes an exception for parishes, municipalities and port commissions. Nevertheless, we believe such expenditures must be evaluated in light of the statutory and constitutional provisions discussed hereinabove and the concept of advertising, itself. We also recognize the competitive nature of the Port to attract clients (i.e., shippers) to enable it to carry out its duties.

La. Atty. Gen. Op. No. 95-439, p. 7.

Further, in keeping with Article VII, Section 14, the Attorney General clarified that the expenses must be commensurate with the benefits received in return as a result of the advertisement. The Port must be afforded discretion in determining the value of the advertising and the media utilized, and sound business judgment should be the controlling factor to insure the expense are reasonable. The Attorney General also recommended, but did not require, that a cooperative endeavor agreement set forth the obligations and benefits. La. Atty. Gen. Op. No. 95-439.

Mr. Richard, on behalf of the Port, was exercising his discretion pursuant to La. R.S. 51:1201 in determining the appropriate means of advertisement or promotion and development of industry, trade and commerce. The Cooperative Endeavor Agreement executed for sponsorship of the Boy Scout School Night Out specifically delineated the Port's interest in promoting the expansion of industry, trade and commerce within its Port area. Likewise, the Canadian delegation was in Louisiana to explore their investment and involvement in the construction and operation of a new international cargo airport on the west bank of the Mississippi River between Donaldsonville and White Castle. See La. Atty. Gen. Op. No. 95-439 (Luncheon attended by German trading representatives promoted industry, trade and commerce as it relates to the Port). The proposal contemplated for the airport includes an intermodal shipping element which directly affects the Port. The Port would have jurisdiction over any docking facilities utilized in conjunction with the cargo center.

Mr. Richard's membership in and use of his membership with the Camelot Club was in furtherance of the Port's statutory obligations and duty to promote and develop industry, trade and commerce. Such expenditures are clearly authorized by La. R.S. 51:1201.

C. Golf Tournament Sponsorship Reimbursement

It is alleged that Mr. Richard was wrongfully reimbursed for sponsorship of a Chamber of Commerce golf tournament in violation of Port policy. Again, pursuant to La. R.S. 51:1201, the Port and Mr. Richard, as Executive Director and Chief Executive Officer of the Port, are entitled to advertise in a manner intended to promote and develop trade, industry and commerce and can exercise sound business judgment in deciding the appropriate means for doing so. La. Atty. Gen. Op. No. 01-0472; La. Atty. Gen. Op. No. 95-439. Mr. Richard exercised his sound business judgment in approving the sponsorship of a Chamber of Commerce golf tournament. Likewise, the Commission President exercised his sound business judgment in approving Mr. Richard's actions and expenses. The Attorney General has opined that sponsorship of a golf tournament is a permissible means of advertising pursuant to La. R.S. 51:1201. La. Atty. Gen. Op. No. 95-439 (evaluating expenditures for numerous golf tournament sponsorships by the Port of New Orleans).

Moreover, Mr. Richard is unaware whether he was reimbursed twice for the same golf tournament, and cannot confirm or deny whether this allegation is accurate. However, even if it is accurate, this was clearly an unintentional oversight on the part of Mr. Richard and the Commission President signing the approval of such expenses.

D. Alleged Inadequate Documentation Reimbursement

It is alleged that the documentation submitted by Mr. Richard for expenses was inadequate inasmuch as he submitted credit card receipts as opposed to itemized receipts. Indeed, Mr. Richard may not have produced itemized receipts for all expenses. However, he did submit adequate documentation of his expenses, including the nature of the expense, the date, time and location of the event, the persons present at meals or entertaining, and the relevant discussions with those persons. Thus, Mr. Richard did adequately document his expenses and was never questioned or denied these requests for reimbursement. To the contrary, his expenses were approved by the Commission President.

Additionally, the preliminary report states that only a small amount of these expenses "appear" to be for customer entertainment. Mr. Richard, as Executive Director and Chief Executive Officer, had a responsibility to be active in the community and promote and develop industry, trade and commerce, as provided by statute. This responsibility entitles and requires Mr. Richard to maintain contact with and entertain many individuals who may not "appear" to be customers of the

Port, but who are important for promotion of the Port and the industrial and economic development of the Port.

The preliminary report also questions the purchase of alcohol for entertaining customers. The Attorney General examined this issue in connection with expenses by the Port of New Orleans in La. Atty. Gen. Op. No. 95-167, noting:

The Office of the Attorney General has historically opined that, absent statutory authorization, the payment of, or reimbursement for, meals and/or foods served in conjunction with parties and other types of celebratory functions, from public funds, is improper under Article VII, Section 14 of the Louisiana Constitution of 1974. Attorney General Opinion Nos. 94-115, 91- 589 A, 77-1494 and 76-1680. However, we find the expenditure contemplated in your request to be distinguishable.

As previously noted, the District is statutorily authorized to expend public funds in the furtherance of the promotion of industry and its facilities. Pursuant to this authority, the District is currently in the completion phase of a major renovation to its infrastructure. A dedication ceremony, not for the District's employees or the public, in general, but rather for the District's customers, public officials and local business leaders, all having interests in the affairs of the District, serves the public purpose of familiarizing those who have official business with the District with the newly constructed facilities.

We, therefore, conclude that the use of public funds to fund the dedication ceremony is authorized by R.S. 51:1201, and is not repugnant to the provisions of Article VII, Section 14.

Additionally, the Attorney General evaluated expenses by the South Louisiana Port Commission or its agent in purchasing alcoholic beverages for its customers during lunches or dinners. The opinion clarified as follows:

The increasing demand upon governmental services and the present decline in the national and local economy along with the current emphasis on economic development in order to broaden the revenue base in Louisiana, all are factors that combine to require us to examine the parameters of 'reasonableness' in light of current business practices. There must be a balance of reasonable expenditures at business lunches or dinners where clients or customers from the private sector are the primary attendees, where the agenda has an undisputed public purpose and public benefit, and where the expenditure is not disproportionate to the value of the public

funds expended. It is not a matter of whether one eats donuts or duck, drinks coffee or chardonnay that is the primary consideration. The primary concern is the reasonableness of the expenditure under the circumstances.

La. Atty. Gen. Op. No. 02-0125.

Mr. Richard provided adequate documentation in support of his requests for reimbursements. Furthermore, Mr. Richard was entitled to (and expected to) entertain various individuals in the furtherance of the Port's duty to develop and promote industry trade, and commerce of the Port. Lastly, the purchase of alcoholic beverages as part of this entertainment is not prohibited and clearly, in this case spanning a 29 month period, was not excessive.

E. Personal Expenses Reimbursement

Mr. Richard did review his expenses submitted for reimbursement in December 2003 and realizes that two of the meals submitted were for personal expenses. Mr. Richard has explained that he maintains his business and personal receipts in folders that are kept in close physical proximity to one another. Additionally, Mr. Richard uses one debit card for both personal and business purposes. In reconciling and submitting his business expenses, Mr. Richard unintentionally submitted the two receipts for reimbursement from the Port. Immediately upon realizing his error, Mr. Richard reimbursed these amounts to the Port. Any suggestion that Mr. Richard's actions were intentional is absolutely false and unsupported by the facts.

III. Deferred Compensation:

It is alleged that Mr. Richard approved an increase to the deferred compensation plan providing a Port matching contribution for the years 2001 through 2004 without the Commission's approval or knowledge. Mr. Richard denies such an allegation.

Mr. Richard approved an increase for the year 2002 only. Regarding his approval of the increase for the year 2002, Mr. Richard was told by Alfred Starns, Director of Finance and Administration, that such an increase fell within the budget already approved by the Commission and within his authority. Mr. Richard did not approve any increase in matching contributions in any other year.

Alfred Starns, Director of Finance and Administration, drafted a memorandum to Mr. Richard requesting an increase in matching contributions made by the Port in the year 2002 due to an increase by the Internal Revenue Service of the maximum pre-tax dollar amount that an employee could set aside in a deferred compensation plan. Initially, Mr. Richard refused the request because

he felt it was an item that should be addressed by the Board of Commissioners. Mr. Starns responded that the dollar amount of the exposure for the Port was already included in the budget and approved by the Commission. He also indicated that the total exposure was within Mr. Richard's approval authority. At the time, the agenda for the Board of Commissioners meeting had been sent out and posted. Mr. Starns insisted that he was pressed to get the increase in place. Based on these facts and circumstances, Mr. Richard approved this request for a cost increase for the year 2002 only.

Mr. Richard was not informed that the request was for a permanent percentage of contribution increase, and would not have approved such a request.

IV. Alleged Improper Donations:

Article 7, Section 14 of the Louisiana Constitution of 1974 prohibits the state or its political subdivisions from loaning, pledging or donating funds, property or things of value to or for any person, association or corporation. The Louisiana Supreme Court has held that Article 7, Section 14 is violated when the state or one of its political subdivisions seeks to give something of value when it is under no obligation to do so. *City of Port Allen v. La. Municipal Risk Agency*, 439 So.2d 399, 401-02 (La. 1983). The term "legal obligation" has been interpreted by the Attorney General to mean that the expenditure of funds be "sanctioned" or "authorized by law" or in the "discharge of a legal duty." La. Atty. Gen. Op. No. 04-0149; La. Atty. Gen. Op. No. 02-0157; La. Atty. Gen. Op. No. 92-204. In addition, several Attorney General opinions refer to the legal obligation requirement as the requirement of "an underlying legal obligation or authority" for the transfer of public funds. La. Atty. Gen. Op. No. 00-14. There has been no violation of Article 7, Section 14 in this instance as all of Mr. Richard's actions were specifically authorized by statute. As set forth in great detail above, La. R.S. 51:1201 authorizes the expenditure of Port funds for the purpose of promoting industry, trade or commerce, including advertisement. The Port has a duty to develop commerce, and legitimate expenditures are an inherent part of that duty. See La. R.S. 34:1223; La. Atty. Gen. Op. No. 02-0125.

Furthermore, a cooperative endeavor agreement is not required when acting pursuant to La. R.S. 51:1201. Article 7, Section 14(C), which authorizes cooperative endeavor agreements is permissive in nature. This fact is made clear by the express language of Article 7, Section 14(C), which provides:

For a public purpose, the state and its political subdivisions or political corporations **may** engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual.
(Emphasis added).

It has been consistently stressed, both in Attorney General opinions and jurisprudence, that Article 7, Section 14's authorization of cooperative endeavor agreements is not an exception to the general prohibition against donating public funds. *City of Port Allen v. La. Municipal Risk Agency*, 439 So.2d 399, 402 (La. 1983); La. Atty. Gen. Op. No. 05-0134. The existence of a cooperative

agreement cannot justify an otherwise illegal donation just as the lack of an agreement cannot invalidate an otherwise legal one. The primary inquiry is always whether the state or political subdivision at issue is authorized to spend the public funds at issue. *Id.*

The Attorney General has recognized the right to advertise or spend funds to promote the development of industry, trade and commerce, even in the absence of a cooperative endeavor agreement. See La. Atty. Gen. Op. No. 02-0157 (Rapides Parish Policy Jury may use public funds for “Jazz on the River” sponsored by a private, nonprofit corporation if participation is to promote and develop local industry through advertisement); La. Atty. Gen. Op. No. 01-0472 (City of Scott is authorized to purchase cups and beads with City’s name and/or logo to be thrown in the City’s Mardi Gras parade if it finds it will promote, encourage and develop industry, trade and commerce); See also, La. Atty. Gen. Op. No. 95-439 (Attorney General “recommends” cooperative endeavor agreement).

V. Summary:

The allegations contained in the preliminary draft of the compliance audit report regarding the Greater Baton Rouge Port Commission and Roger Richard are simply without merit. The draft report fails to take into consideration the specific provisions of Mr. Richard’s Employment Contract, prior Attorney General Opinions relative to interpretation of La. R.S. 51:1201, and Mr. Richard’s authority and responsibility to promote and develop industry trade and commerce pursuant to such statute on behalf of the Port. The documentation submitted by Mr. Richard for expenses incurred satisfy the requirements of his Employment Contract with the Port. The donations complained of, again, were clearly authorized by statute and previous Attorney General Opinions and under no circumstances violate Article 7, Section 14 of the Louisiana Constitution. Mr. Richard’s accumulation of compensatory time complies with applicable state law, with the terms of his Employment Contract and is fully consistent with the Port Commission’s prior practice in the treatment of its exempt employees.

Particularly worthy of note is the fact that the Port Commission employs not one, but two separate attorneys who routinely review policies and actions of the Commission and advise on legal matters pertaining to same. Barry Wilkinson, one of the Commission’s attorneys, drafted Mr. Richard’s employment contract. Both Mr. Wilkinson and Steve Glusman, another Port Commission attorney, had access to and some responsibility for the policies of the Commission. Both regularly attended Commission meetings and both were provided with copies of the minutes of those various meetings. Prior to 2005, not once were any of the actions now-complained of by the Legislative Auditor ever addressed by legal counsel for the Commission. Neither Mr. Wilkinson nor Mr. Glusman ever came to Mr. Richard prior to 2005 and suggested that any of the public relations policies, actions, donations, expenses, reporting thereof, or compensation questions now being raised by the Legislative Auditor, were, in any way, problematic.

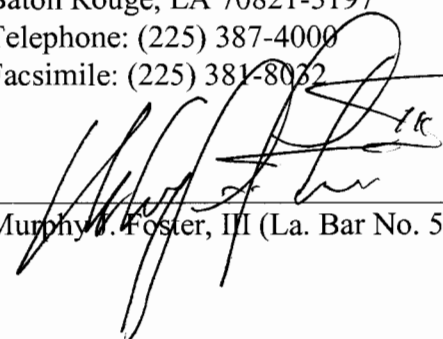
Also important is the fact that virtually all of the points now being raised by the Legislative Auditor were reviewed by the Office of the Legislative Auditor in 2001. In 2001, the Legislative Auditor conducted a wholesale review of policies, practices and procedures of the Port Commission and specifically as they related to Mr. Richard. **None** of the now-complained of practices, all of which were in plain view at the time of the 2001 audit, were ever challenged by the Legislative Auditor.

Finally, at the time Mr. Richard was hired at the Port in 1998, the total assets of the entity measured roughly \$35,000,000.00. Under Mr. Richard's direction, those assets have more than doubled now totaling approximately \$75,000,000.00. Additionally, when Mr. Richard was hired in 1998, the Port had roughly \$2,000,000.00 in retained earnings on deposit. Again, under Mr. Richard's direction, that number has grown seven fold and now totals roughly \$14,000,000.00. Mr. Richard's successes at the Port as its CEO and Executive Director are legion and indeed self evident. There can be no question but that under his direction the Port has flourished and grown.

The preliminary report of the Legislative Auditor is obviously flawed legally. It fails to take into consideration Mr. Richard's employment contract, prior Commission policy, and prior legal interpretation by the Attorney General relative to the issues raised. The report of the Legislative Auditor, in fairness, should be withdrawn.

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cc: Roger Richard

employee on Workman's Compensation. However, leave without pay may be charged to employees who fail to properly apply for or use other forms of leave when absent from work. Applications for leave without pay should be forwarded through the appropriate channels for approval. Leave without pay may be granted by the appointing authority for a period not to exceed one year without the approval of the Director of Civil Service. In the event that the employee does not return to work on the first day following the expiration of his approved leave without pay, the employee shall be considered to have abandoned his position and must be removed in accordance to Chapter 12 of the Civil Service Rules.

COMPENSATORY LEAVE - Compensatory leave is actually compensation for overtime hours worked. Compensatory leave can be used in lieu of annual or sick leave, however, it is the policy of this agency that employees use all compensatory leave before using accumulated annual leave. All non-payable compensatory leave is canceled upon separation and cannot be recredited if re-employed in the same or another agency. Not more than forty-five working days or the equivalent thereof in hours (360) of accrued unused non-payable compensatory leave shall be carried forward into any calendar year. All payable compensatory leave earned at the time and one-half rate shall be paid upon separation or transfer from the agency. Not more than 240 hours of compensatory leave earned at the time and one-half rate, which is the equivalent of 160 hours of overtime worked, shall be accrued by an employee. Any overtime hour which causes an employee's accumulated compensatory leave earned at the time and one-half rate to exceed 240 hours, must be paid to the employee in cash at the time and one-half rate. The appointing authority may require the use of compensatory leave at any time to avoid the future payment of such compensatory time at the overtime rate.

CONTRACT OF EMPLOYMENT OF
ROGER P. RICHARD AS EXECUTIVE DIRECTOR AND
CHIEF EXECUTIVE OFFICER OF
THE PORT OF GREATER BATON ROUGE

111

STATE OF LOUISIANA

PARISH OF WEST BATON ROUGE

THIS AGREEMENT made and entered into this 15TH day of January, 2004 but effective January 1, 2004 by and between the Greater Baton Rouge Port Commission, a political subdivision of the state of Louisiana (hereinafter "The Port") and Roger P. Richard, an individual currently residing at 1904 Magna Carta Place, Baton Rouge, Louisiana 70815

WHEREAS, by resolution at its meeting of November 20, 2003 the Port Commission voted to continue the contract of employment of Roger P. Richard as the Executive Director and Chief Executive Officer of The Port and Roger P. Richard has agreed to such continued employment.

NOW, THEREFORE, the parties hereto mutually agree as follows:

A.

The Port hereby employs Roger P. Richard as the Executive Director and Chief Executive Officer of The Port in such capacity and under such title and designation to act and to perform and discharge all of the authorities, duties, powers and functions of Executive Director and Chief Executive Officer authorized by law or by special or general order, authority or resolution of the Port Commission, and by the by-laws of The Port, and that Roger P. Richard hereinafter referred to as "Executive Director and Chief Executive Officer", agrees to serve as such Executive Director and Chief Executive Officer for the consideration and upon and subject to the terms and conditions hereinafter stated. All of the duties and authorities of the Executive Director and Chief Executive Officer hereafter prescribed by the Commission shall be subject to change or cancellation by the Commission from time to time upon action of the Commission entered in the minutes of the Commission.

B.

The Executive Director and Chief Executive Officer's compensation shall be as follows:

1. At the rate of ONE HUNDRED SEVENTY-SEVEN THOUSAND NINE HUNDRED EIGHTY FIVE AND 60/100 (\$177,985.60) DOLLARS per annum effective January 1, 2004, subject to re-negotiation each year of the contract, and payable in accordance with the payroll schedule for all port employees for the duration of the term hereinabove specified.
2. Participation in all Port, State and/or Civil Service sponsored benefits afforded Port employees including, but not limited to, holidays, insurance, retirement, annual and sick leave, each of such leave benefits shall accrue at the rate of fourteen (14) hours per month, and
3. Such other benefits as may be hereafter provided.

EXHIBIT

B

4. The Executive Director and Chief Executive Officer shall be reimbursed for any expenses incurred by him in the course of the discharge of any duty as Executive Director and Chief Executive Officer. This includes mileage for the use of a personal automobile at the rate authorized. Such reimbursement shall be contingent upon the Executive Director and Chief Executive Officer's keeping records of such expenses and presenting such evidence of the expenses as The Port may require or as may be required by law with approval of the Commission President.
5. The Executive Director and Chief Executive Officer shall receive a monthly car allowance of ONE THOUSAND AND NO/100 (\$1000.00) DOLLARS during the term of this contract, subject to renegotiation annually.

C.

During the period of his employment, the Executive Director and Chief Executive Officer shall not participate directly or indirectly in any activity for compensation that in the opinion The Port will interfere with the discharge of any of his duties or that will conflict with any interest of The Port. The Executive Director and Chief Executive Officer shall not become involved and/or participate (financially or otherwise) in political campaigns.

D.

The Executive Director and Chief Executive Officer shall faithfully carry out the duties of his office and instructions of the Commission. The Executive Director and Chief Executive Officer shall be subject to removal by the Commission at any time, forthwith, if he should fail to perform and observe any provision of this contract in a reasonable and prudent manner or if, in the opinion of the Commission, he shall be guilty of repeated inattention to any duty to The Port; or if he shall refuse to carry out any lawful instruction of the Commission related to the operation of The Port; or if he should be guilty of any act, either of commission or omission, which would give rise to a discharge by law; and, in the event of such removal, this contract and each and all of the Executive Director and Chief Executive Officer's rights and benefits hereunder and all of his authority shall terminate forthwith upon entry of such order or removal in the minutes of The Port, all without liability on the part of The Port for loss or damages.

E.

It is the intention of the parties that the Executive Director and Chief Executive Officer shall be entitled to indemnification in connection with the performance of any and all duties hereunder afforded pursuant to state law, particularly, but not limited to, the provision of LA. R.S. 13:5108.2.

F.

This contract shall at all times be contingent upon the Executive Director and Chief Executive Officer qualifying for and providing such bonds, each conditioned and in such amount and with such surety or sureties as may from time to time be required by law or by The Port, the premium to be paid by The Port.


G.

This contract shall remain in full force and effect until December 31, 2008 and shall supercede and replace any and all prior employment contracts between the parties, all prior contracts being hereby terminated.

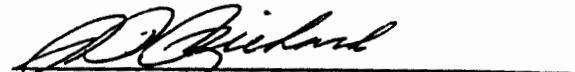
Executed at Port Allen, Louisiana this ____ day of January,
2004 pursuant to action of The Greater Baton Rouge Port
Commission at its meeting of November 20, 2003.

GREATER BATON ROUGE PORT COMMISSION


Witness


Witness

BY:


Roger P. Richard - Executive
Director and Chief Executive
Officer

GREATER BATON ROUGE PORT COMMISSION BY-LAWS

ARTICLE I

Office of the Commission

The principal office of the Commission shall be at the Port Commission administration building, Port Allen, West Baton Rouge Parish, Louisiana.

The Commission may establish branch offices at such other place or places as the Commission may from time to time designate and as the business of the Port may require.

ARTICLE II

Regular meetings

The regular meeting day of the Commission shall be the fourth Thursday in each month.

Special meetings

Special meetings of the Commission shall be held at the call of the President, and shall also be held on the written request of five (5) members of the Commission. The notice of each special meeting shall state the purpose for which it is called, and only those matters shall be considered which have been included in the call, unless all of the members of the Commission are present and agree to take up other matters.

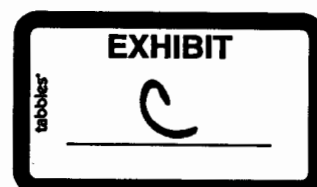
Notices of the time and place of special meetings and agenda items shall be mailed to each member of the Commission by the Secretary or Executive Director and Chief Executive Officer, addressed to him at his address as it appears upon the records of the Commission, postmarked at least two days before the day on which the meeting is to be held, or shall be communicated to him at his address either personally or by telegram, telephone, or special delivery letter delivered not later than the day before that on which the meeting is to be held.

The Executive Director and Chief Executive Officer, the General Counsels, and the Consulting Engineer shall attend all meetings of the Commission unless otherwise directed by the Commission.

ARTICLE III

Quorum-Minutes

A majority of the members of the Commission shall constitute a quorum and all action or resolutions of the Commission must be approved by the affirmative vote of not less than a majority of all members of the Commission.



The Executive Director and Chief Executive Officer shall cause a tentative draft of the minutes of each meeting to be submitted to each member of the Commission and to the General Counsel and Consulting Engineer within fifteen (15) days after such meeting. All minutes shall be reviewed for approval at the next regular meeting of the Commission.

ARTICLE IV

Election of Officers and Appointments

Officers shall be elected annually at the first regular meeting of the Commission in October, at which time the members of the Commission shall elect, from among their own number, a President, a Vice President, a Secretary and a Treasurer, **to hold office for one year or until their successors are elected and qualified.** However, if a new member of the Commission is at that time in the process of being appointed, the election of officers may be postponed from meeting to meeting until such a new member has been appointed and qualified.

In case a vacancy shall occur among the elected officers due to death, resignation, disqualification, or other cause, a new officer shall be elected by the Commission to fill the office for the unexpired portion of the term.

Any member of the Commission elected to one of the above offices shall be eligible to succeed himself.

A member of the Commission whose term of office shall have expired or who may resign, but who still retains the qualifications required by law, shall continue to serve as a Commissioner with full power until his successor shall have been duly appointed and qualified.

The Commission shall also appoint an Executive Director and Chief Executive Officer who shall serve at the pleasure of the Commission, or in accordance with a contract which may exist between the Greater Baton Rouge Port Commission and the Executive Director and Chief Executive Officer.

ARTICLE V

Duties of President

The powers and duties of the President shall be:

- 1) to preside at all meetings of the Commission with the right to vote on all questions;
- 2) to take all reasonable steps to see that the functions and purposes of the Commission, as set forth in the laws and Constitution of the state of Louisiana, are carried out, and to see that the tariffs, regulations, and resolutions of the Commission are complied with;
- 3) to call special meetings of the Commission in his discretion;
- 4) to serve as an ex-officio member of all committees, and
- 5) to perform such other duties as are usually incumbent upon the president of a commission.

ARTICLE VI

Duties of the Vice President

In the absence or disability, for any cause, of the President, his duties shall be performed by the Vice President who shall act in his place and stead and shall, in addition, perform such other duties as are usually incumbent upon such officer.

ARTICLE VII

Duties of the Secretary

In the absence or disability, for any cause, of the President and of the Vice President, the Secretary shall act as President, and shall discharge the duties of that office.

He shall, when required, attest any official document of the Commission with his signature and with the impress of the Commission's official seal and shall, in addition, perform such other duties as are usually incumbent upon such officer.

ARTICLE VIII

Duties of the Treasurer

The Treasurer shall, in his official capacity, have supervision over the finances of the Commission, shall sign such documents relating to the business of the Commission as may be directed by the Commission and shall, in addition, perform such other duties as are usually incumbent upon such officer.

ARTICLE IX

Committees

After the annual election of officers, the President shall appoint subcommittees as, in his discretion, are advisable to handle and further the work of the Commission.

The duties and powers of each said committees shall be as specifically authorized by the Commission from time to time and as each item of business is assigned by the President.

ARTICLE X

Executive Director and Chief Executive Officer

- 1) The Executive Director and Chief Executive Officer shall also serve as the Commission's Chief Executive Officer. He shall have charge, supervision and control of the Commission's properties, and shall be responsible for the efficient and economical administration of the business of the Port.

- 2) The Executive Director and Chief Executive Officer shall have control over all classified and unclassified employees of the Commission, covering all of its departments and forces, and shall fix the duties, powers and compensation of all personnel and employees in such departments, subject to such Civil Service requirements as may be hereafter established by state law;
- 3) The Executive Director and Chief Executive Officer, subject to applicable state law, shall have the authority to purchase materials, supplies, and equipment for the betterment or improvement of the Port's facilities, and to enter into contracts, which shall not exceed Ten Thousand (\$10,000) Dollars, in order to carry out the policies or projects of the Commission, and to grant releases and to adjust and/or compromise any claim by or against the Commission in a sum not to exceed Five Thousand (\$5,000) Dollars. In the event of an emergency, the Executive Director or Chief Executive Officer is authorized to expend up to Fifty Thousand (\$50,000) Dollars. However, he shall be required to make a full presentation of the emergency situation and the funds so expended at the next regular meeting;
- 4) The Executive Director and Chief Executive Officer shall have the right, power and authority for and on behalf and in the name of the Commission, to sign, execute, and deliver leases and permits, and renewals of leases and permits, on property of the Commission on such terms and conditions as may be specifically provided in a special resolution of the Commission without further authority from the Commission, provided such leases and permits are first approved as to form by a legal counsel retained by the Commission;
- 5) The Executive Director and Chief Executive Officer shall have the authority to write off the books of account any items not exceeding in any one case Five Thousand (\$5,000) Dollars, which he considers uncollectable, after first exhausting all legal remedies including placing such item or items in the hands of the Port attorneys for collection. Uncollected items in excess of Five Thousand (\$5,000) Dollars shall be presented to the Commission for its consideration before being written off;
- 6) It shall be the duty of the Executive Director and Chief Executive Officer, within ninety (90) days after the close of each fiscal year of the Commission, to have prepared a written report covering such fiscal year;
- 7) The Commission shall obtain and keep in force a blanket fidelity bond on all employees of the Commission in an amount of not less than Twenty Thousand (\$20,000) Dollars each, and it shall provide for additional fidelity bond coverage on such employees, and in such individual amounts, as the Commission shall from time to time specify; and
- 8) The powers, duties and functions of the Executive Director and Chief Executive Officer as stated in paragraphs 1 through 7 hereinabove, or any other By-Laws, shall at all times be subordinate and subject to any resolution passed by the member of the Commission, and further subject to review by the members at any regular or special meeting of the Commission.

ARTICLE X (A)

Managing Director

- 1) The powers, duties and functions of the Managing Director shall be those delegated to him by the Executive Director and Chief Executive Officer.
- 2) During the absence of the Executive Director and Chief Executive Officer or due to the inability for any reason or cause of the Executive Director and Chief Executive Officer to

perform any and all of the powers, duties and functions granted to said Executive Director and Chief Executive Officer in Article X or any other By-Law, the Managing Director shall have and exercise all the powers, duties and functions granted to the Executive Director and Chief Executive Officer in Article X of these By-Laws or any other By-Law;

- 3) The members of the Commission shall determine what constitutes the inability of the Executive Director and Chief Executive Officer to perform any and all of the powers, duties and functions granted said Executive Director in Article X of these By-Laws or any other By-Law.

ARTICLE XI

Fiscal Year

The Commission's fiscal year shall be from January 1st through December 31st, starting January 1, 2002.

ARTICLE XII

Disbursement of Funds

Checks drawn on the Commission's checking accounts, with the exception of the Commission's Payroll Account, shall require the signature of two (2) persons having the stated signatory authority.

Staff members with signatory authority shall include the Executive Director and Chief Executive Officer, Managing Director, and Director of Finance. Commissioners with signatory authority include Officers of the Board of Commissioners and any other Commissioners so designated by the President.

Two (2) staff members with signatory authority, one staff member possessing signatory authority and one commissioner possessing signatory authority, or two Commissioners, shall sign all checks of Fifty Thousand Dollars (\$50,000.00) or less. An authorized staff member and one Commissioner possessing signatory authority or any two (2) Commissioners possessing signatory authority shall sign a check of any denomination greater than \$50,000.00.

Employee paychecks drawn on the Commission's Payroll Account shall require one (1) signature. The Executive Director and Chief Executive Officer, Managing Director, and the Director of Finance are authorized to sign employee paychecks. If an authorized staff member is not available, a Commissioner with duly designated authority may sign.

The Commission may authorize, by resolution, other employees of the Commission to sign and countersign checks in special cases.

ARTICLE XIII

Amendment of By-Laws

These By-Laws may be altered or amended at any regular or special meeting of the Commission with the approval by the affirmative vote of not less than two-thirds (2/3) of all members of the Commission. However, no such alteration or amendment shall be considered unless a ten (10) day written notice of the intention to alter or amend the By-Laws shall have been given in writing to each member of the Commission, to which there shall be attached a draft of the proposed alteration or amendment.

ARTICLE XIV

Order of Business

Not later than Friday next preceding the regular meeting day, the Executive Director and Chief Executive Officer of the Commission shall prepare and mail to each Commissioner and to the Commission's General Counsel and to its Consulting Engineer an agenda setting forth all matters to be considered and/or acted upon at the regular meeting, and only those matters set forth in such agenda shall be considered and/or acted upon at the meeting unless all of the members of the Commission are present and agree to take up other matters.

Any Commissioner wishing to place any matter on the agenda shall do so by giving notice thereof to the Executive Director and Chief Executive Officer or his designee not later than Thursday next preceding the regular meeting date.

ARTICLE XV

Rules of Order

Except as otherwise provided by law or by these By-Laws, Roberts' Rules of Order shall be the parliamentary authority for all matters of procedure at Commission meetings.

ARTICLE XVI

Revision of By-Laws

This revision to the By-Laws of the Greater Baton Rouge Port Commission is effective January 1, 2001 and was approved by the Greater Baton Rouge Port Commission at a regular meeting held on December 14, 2000.

EXHIBIT "E"

GREATER BATON ROUGE PORT COMMISSION

Commission Meeting

5:00 p.m. Thursday, April 28, 2005



The Greater Baton Rouge Port Commission met in regular session at 5:00 p.m. on Thursday, April 28, 2005 at the Commission Offices in West Baton Rouge Parish, Louisiana.

Following the Call to Order and the Pledge of Allegiance, the roll was called.

PRESENT

Mr. Brian
Mr. Dragg
Ms. Ferdinand
Mr. Ishmael
Mr. Johnson
Ms. Robertson
Mr. Watts
Mr. Wilkinson

ABSENT

Mr. D'Agostino /
Mr. Delpit
Mr. Hurdle
Mr. Pugh
Mr. Rigell
Mr. Thibaut
Mr. Tillis

Agenda Item 4 - Approval of minutes of a Regular Commission meeting held on March 24, 2005.

Mr. Johnson moved for approval, seconded by Mr. Dragg, and the minutes were approved unanimously.

Agenda Item 5 - Update on the Ormet bankruptcy proceedings with discussion and possible action.

Mr. Starns said he has not received the Attorney General's opinion so everything is pending.

Agenda Item 6 - To pass an "Inducement Resolution" to enable the port to sponsor the sale of \$5 million of tax-exempt bonds for SABEL INDUSTRIES, INC., for the construction of a steel distribution facility on port property.

Mr. Hardman said Sable Industries has asked for a thirty-day reprieve on this inducement resolution. We are still in negotiations over the site, and possibly the financial arrangement. Mr. Bob Fenet, who is representing Sable Industries, is in attendance and willing to answer any questions. No action is required tonight on this item.

Mr. Wilkinson asked Mr. Fenet if his client intends to use waterborne transportation.

Mr. Fenet said hopefully. There are some projects we are looking at the importation and receiving cargo over the docks. Those are projects they are currently bidding on.

Mr. Wilkinson asked about rail transportation.

Mr. Fenet responded by saying probably there would be more trucking. Everything is still on the table. They can go to Mississippi and they can go to Texas, but I'm from Louisiana,

and I'm trying to bring them here so they can serve Mississippi and Texas out of Baton Rouge. Right now they are using mostly trucks. They do bring some cargo into Texas where their treatment facility is located. There are a host of questions to answer but I think in the long term, to move cargo eastward, you are saving 140 miles coming to Baton Rouge. So, that's under consideration. I'm an old industrial engineer so we're looking at the system and the dollars. He complimented the staff for all their help. Sabel Industries has been doing business for 150 years and the fifth generation Sabel is running the company. He said Sabel Industries would be a great asset for Louisiana and I'll do everything I can to get them here.

Mr. Johnson expressed his concern for long-term leases and asked legal counsel to share the terms of the lease.

Mr. Wilkinson (legal counsel) said he has not participated in any of the discussions, and does not have any information.

Mr. Johnson said he is concerned about long-term leases and investment versus the term of the lease. He said he would like a legal opinion and to be comfortable with their agreement.

Mr. Hardman said they were waiting to see how the financing was going to go and whether they were going to bond finance, use their own money, the term of the lease, and the arrangements of it. We were waiting to see if that could get worked out and if they were suitable here and then see if we couldn't work out the lease arrangements. We will bring all this back before the Board. He said he is aware of the concerns about what happens in the end, and who owns what, final deposition, the assets, etc.

Mr. Ishmael asked the chairman if any of this has been brought before the Planning and the Finance Committee.

Mr. Wilkinson said it was brought before the Finance Committee and the Executive Committee.

Mr. Ishmael asked if Committee was in agreement with what is going on with staff with the lease agreements.

Mr. Wilkinson said we have recommended taking this step, which is a very preliminary step in the process.

Agenda Item 7 - Monthly Engineering Report by Pyburn & Odom.

Mr. Thomas reported no changed to the report previously mailed to the Commissioners and discussed at the Committee meeting. He opened the floor to questions.

Mr. Wilkinson asked Mr. Thomas if he was satisfied with the progress of the maintenance items that Cargill was addressing.

Mr. Thomas said they made an inspection and Mr. Crooks is in the process of writing up their report. They will get with staff and review before the next Engineering Committee meeting.

Mr. Watts asked if they discovered who was responsible for what.

Mr. Thomas responded by saying the report will be presented to Mr. Wilkinson, who will make a determination according to the lease agreement.

Agenda Item 8 - Monthly Engineering Report by staff.

Mr. Hardman said there was nothing further to add to the report that was given in Engineering and Executive Committee meetings. Everyone has probably seen the canopy upon entering the port. A lot of progress has been made on this since the last meeting. To the best of my knowledge, all of our construction projects are moving forward smoothly with no change orders at this point.

Agenda Item 9 - Update on Hummel Tract Access and property acquisition.

Mr. Hardman said Mr. Wilkinson (legal counsel) submitted the port's offer approximately two weeks ago with an April 29th deadline for a response.

Mr. Wilkinson (legal counsel) said there have been a few developments since last week's meeting. Mr. Jerry Davis, the attorney for the Hewes family contacted me and asked that he be able to make some changes to the offer, which indicated to me that they were probably contemplating a counter offer and therefore, rejection of ours. We have until tomorrow. I've spoken to him yesterday and the day before. The changes he had to make were not of any material changes. In the original offer, I had proposed that they transfer half of the minerals to us and they came back and want all of the minerals to be reserved. That was the major material change. The rest of the changes are dates and timing. Minor changes. He's trying to work out the wording for the document so we can get down to the money. This is what I gathered and took from all of his comments.

Mr. Johnson asked if it would be proper right now to discuss that aspect of that or do you want to do that?

Mr. Wilkinson (legal counsel) said we would be better off waiting to see what they do.

Mr. Johnson said just the mineral interest.

Mr. Wilkinson (legal counsel) said I would rather if you discuss that with me.

Mr. Johnson said as a landowner, it would surely be nice for the port to have the minerals. I am somewhat familiar with the Hewes family. They are an old family and I would think they are very familiar with the oil industry because they had some property in Pointe Coupee. If it were my property, I would keep the minerals. As one Commissioner, I would share that. I wouldn't let it be a hold up on the sale. I'm for them keeping their minerals. That's my opinion on the minerals. I don't have a problem with them reserving their minerals for ten years. I don't think there would be any activity for ten years.

Mr. Wilkinson (legal counsel) said with the state it is permanent, it never expires.

Mr. Wilkinson said we are not speculating on the minerals.

Mr. Wilkinson (legal counsel) said when an individual reserves the minerals in a transfer to the state or one of its political subdivisions, the minerals do not prescribe. It is the only situation that I am aware of but I am not a mineral attorney. It is the only situation that I am aware of that the minerals do not expire with ten years non-use. Most sales that I have seen with governmental entities have a reservation of the minerals. It is more common to have a full reservation of the landowner than not. Mr. Wilkinson said he has not heard anything from the Mahaffeys.

Mr. Wilkinson said we would have to have them release the surface, the use of the surface.

Mr. Wilkinson (legal counsel) said that was in his proposal.

Mr. Wilkinson said it is fair to say that we are not speculating on minerals, so I don't see that as a big problem.

Mr. Wilkinson (legal counsel) said on the second tract, I've heard nothing from the Mahaffey's. Not a word.

Mr. Wilkinson said refresh our recollection, those offers were made independent of one another so that either can accept. Right?

Mr. Wilkinson (legal counsel) said yes. Either can accept.

Agenda Item 10 - Consideration and appropriate action concerning request for approval to advertise for bids for the following:

- a. Security Vessel
- b. Security Fencing at the Port Allen Deepwater Terminal
- c. Emergency Generators

Mr. Johnson asked the president if he thought they needed to vote on the issue to have a true direction on the minerals since it was only the opinion of a couple of Commissioners, or is what was said all that is needed?

Mr. Wilkinson said it is premature for us to take any action when we do not know what their counter proposal is going to be and we will have to address the counter proposal whenever it is.

Mr. Wilkinson (legal counsel) said he has to come back before the full Commission no matter what unless they accept the offer as is.

Mr. Johnson said he understood that part.

Mr. Wilkinson entertained a motion to approve the bids.

Mr. Dragg moved to approve Agenda Item 10, seconded by Mr. Watts, and the motion passed without objection.

Agenda Item 11 - To discuss the evaluation, compensation, benefits, and automobile allowance of the Port's Chief Executive Officer.

Mr. Wilkinson said it was recommended and approved at the Personnel and Executive Committees to keep the Executive Director's salary fixed as is for another year.

Mr. Johnson said he would like to share with the Commission some of the . . . I have two issues.

Mr. Wilkinson asked Mr. Johnson if he would like to get a vote on that first and then have your discussion.

Mr. Johnson said I would rather have my discussion first.

Mr. Wilkinson answered okay.

Mr. Johnson said the Personnel Committee took a good look at Mr. Richard's salary and we analyzed the money that Mr. Richard is making versus the budget. CEO versus a \$4.9 million dollar budget. We felt that there should be a cap right now because of the revenues versus expenditures. Especially in salaries. Especially the CEO salary. Right now, Mr. Richard, with all of his benefits, it is costing us \$247,756.00 a year. This is not counting comp time. That is another issue I want to speak of, a CEO having comp time. This is 2004 figures. We feel that it is most probably the highest at this present time with the revenues we are having that we can afford what our CEO. Because we are looking at \$247,756, now we are looking at also in 2004, 485 hours of comp time. I have a serious, serious problem with our director and comp time. He is on salary. You are talking about \$177,985, plus \$12,000 car allowance, plus 2,500 mileage, plus the benefits. I mean you are talking about \$247,000 it is costing the port and on top of that we are having to . . . he's charging us 485 hours of comp time. I'm not used to having a CEO who gets comp time and a salary. Especially this kind of salary. So, we are talking about 485, I'm going to go back five years, 562, 410, 500, 494, 507. That's 8 to 10 weeks of comp time. I don't expect it from our CEO to charge us that kind of comp time . . . in fact I have a problem with him getting any comp time. Either you're on salary or you're on hourly wages. So, I think it's an issue of comp time. And, you know, we're not that busy of a port where our CEO, if he's, he doesn't have any hours, you know he makes his own hours, whether it's four hours a day, what he thinks he needs to run this port. If it takes ten hours, then I expect him to work 10 hours. Maybe go home, do a six-hour day. This is unheard of. I've spoken to a lot of people, on salary people. There is a part of his contract that says he can have the same benefits as employees. Now, either he's classified or unclassified, hourly or salaried. You can't pick the best of all worlds or the best of both worlds. You have to be one or the other. I wouldn't expect that every time that Roger spends an hour at the port after eight hours, we get charged comp time. That's ten weeks of comp time. I've got a problem with it, and it needs to be corrected.

Ms. Robertson said on the right (referring to correspondence in hand) at the bottom, it's got the comp time payment. Have we paid this or is this an accrued liability?

Mr. Johnson said it is an accrued liability.

Mr. Starns said on the right is the amount that was paid.

Ms. Robertson said we've actually paid these amounts.

Mr. Starns said right. If his salary would have been say \$170,000 in 2004, \$26,000 of that \$177,000 would be comp time, so his regular salary would have been like \$150,000. So, it's only when he takes it, that it's actually an expense to us. But it is an accrued liability. If you build it up, it is an accrued liability.

Mr. Johnson said it shows up . . . okay, now on this comp time . . .

Mr. Wilkinson said okay, now I'm confused about something. Was his salary \$177,000 or was his salary \$150,000?

Mr. Starns said the way we do it is he does not make more than \$177,000 so if he takes comp time, \$26,000 is backed out from the \$177,000. You're not getting \$177,000 plus the \$26,000.

Mr. Johnson said okay, I'm confused now.

Mr. Watts said how do you do that. How do you know at the end of the year what you're going to do?

Mr. Wilkinson said this is comp time that was taken off?

Mr. Starns said right.

Mr. Wilkinson said okay so this is comp time that was used by taking off from work, it wasn't paid.

Mr. Watts said I'm no accountant but how are you going to figure out at the end of the year whether you took it or not and you got \$26,000 sitting there. How are you going to do that? You either took it or you didn't take it.

Mr. Starns said do you see leave taken (referring to spreadsheet), comp time hours taken, 315 hours, that's the amount of comp time hours that he was paid, which is the \$26,805.

Mr. Johnson said in 2004, Mr. Richard earned 485 hours.

Mr. Starns said correct.

Mr. Johnson said right.

Mr. Starns said correct.

Mr. Johnson said undoubtedly he started with a zero balance on January 2004. Did he start with a zero on January 1st in 2004?

Mr. Starns said he probably started with 360.

Mr. Johnson said in 2004, Mr. Richard's comp taken was 315 hours or 8 weeks. So, he took that off.

Mr. Starns said correct.

Mr. Johnson said that's hours that he was on his \$177,000 salary, he didn't use his annual leave, and he took his comp time and was off eight weeks. He got paid for that. And then, he carried over the balance of 315 and 485 to next year, this year.

Mr. Starns said no, he carried over 360.

Mr. Johnson said okay, how does that work. Now tell me comp time earned . . .

Mr. Starns said he had a balance of 360 at the beginning of the year probably, and then 485.

Mr. Johnson said 485 plus the 360 at the end of the year because he carried over 360. Am I right?

Mr. Starns said he took off the 315.

Mr. Johnson said okay. Comp time earned in 2004, January 1st, he carried over how many hours?

Mr. Starns said I'm assuming 360. I'm not sure.

Mr. Johnson said that's in general what he carries over every year.

Mr. Starns said right.

Mr. Johnson said so he started with 360 and then we have 485 earned. Is that 845 hours?

Mr. Starns said yes, that would be hours.

Mr. Johnson said 845 hours at the end of last year because he carried over 360, and he took off 315, so what happens with the time earned and the time taken? The balance is carried over?

Mr. Starns said only 360. The rest of it, we would just take off the books.

Mr. Johnson said okay. So, he carried over 360 every year and he ended up with 360 every year at the beginning, he carried over.

Mr. Starns said for the years that he has that much left over, yes sir.

Mr. Dragg said what happens to his annual leave?

Mr. Starns said it just continues to remain there. It remains on the books.

Mr. Ishmael said he doesn't have to take it.

Mr. Wilkinson said it is continuing to build up.

Mr. LeBlanc said you must take comp time before you touch the annual leave. So, all of the time he has been off has been comp time. His annual leave continued to build.

Mr. Starns said that is basically our in-house policy in that you use your comp time before you use your annual leave.

Mr. Dragg said right, but right now, he's only taken 24 hours of annual leave since he's been here since 1998.

Mr. Starns said that's correct.

Mr. Wilkinson said the annual leave continues to build, it sits there on the books, and it continues to build year after year, and that becomes a liability for the port.

Mr. Ishmael said I would like to ask a couple of questions. Number one on this comp time, Al you have it injected in the computer, right?

Mr. Starns said we keep it, yes sir.

Mr. Ishmael said what, you go in and form up a time sheet, weekly, monthly, bi-monthly.

Mr. Starns said from the time sheets, bi-weekly.

Mr. Ishmael said these time sheets reflect whether his comp time was used, what it's charged to, what project, what trip, what job, what port project it's assigned to. Is that what it is?

Mr. Starns said he gives a general description whether it was an after hours meeting or whether it was on a trip or a seminar or something like that. He does indicate that.

Mr. Ishmael said on those comp sheets, also with his base salary, where you're showing that it's \$177,000 or whatever, and you're adding this Medicare contribution, what is that Medicare contribution. What makes that up?

Mr. Starns said Medicare is paid on your base salary.

Mr. Ishmael said but that is going into the government and form a part of the Social Security.

Mr. Starns said yes sir.

Mr. Ishmael said on that base salary, no matter if it's a salary employee or hourly employee or what, everybody in every business has always got a percentage, a mark up that it costs them, whether it is FUTA, state or federal unemployment, whether it's the Medicare portion, of which to me is the only one I recognize in these columns as being added to a salary. On top of that, everybody has an insurance cost, workman's comp, all of this is a percentage that everybody in business adds as a factor to that base salary. It's \$247,000 dollars you've got sitting off over here. Everything else you've got from health insurance, deferred comp, automobile allowance, and retirement. Other than this Medicare contribution, I don't recognize anything else in any column that is added to a base salary that is in every other business. It's tacked on top of anybody's salary, whether he is hourly or whether he is monthly, or whatever. My question with this \$247,000 is do you have workman's comp, do you have unemployment insurance, and do you have a percentage like they would have your salary or anybody else at this port. They pay you \$100.00, it

probably costs this port, not counting retirement, not counting health, it probably costs the port about \$137.00.

Mr. Starns said workers comp.

Mr. Ishmael said workers comp, unemployment insurance, both state and federal, and you always have an insurance factor built into it. My question with you on this \$247,000, you have automobile allowance. Now, if you take that \$177,000 as a base factor right there, what kind of multiplier are you using with that to come up with what that number really is because it's not \$177,000. It's going to have anywhere with Roger from a 25-38% on top of his salary and then you start all these other items other than his Medicare, which would be a part of the Social Security. We have to match his Social Security don't we?

Mr. Starns said no sir, we don't pay Social Security. The retirement takes the place of Social Security.

Mr. Ishmael said the retirement contribution of \$33,000 is our match to his Social Security. Correct? That's one part of my answer.

Mr. Starns said yes. If you want to call it Social Security but it's actually retirement.

Mr. Ishmael said so you're calling retirement social security. So he doesn't have any other retirement within the state or anything that you're pumping into.

Mr. Starns said no sir. We do pay workers comp insurance.

Mr. Ishmael said no, not that. I want to know about your retirement.

Mr. Starns said oh no, that's it.

Mr. Ishmael said you're only paying Social Security on him and nothing into a state retirement fund. Is that correct?

Mr. Wilkinson said no, we're not paying Social Security.

Mr. Starns said we are not paying Social Security, we're paying into the state retirement fund. That's why I said the retirement here rather than Social Security.

Mr. Ishmael said we are not paying any Social Security on any of the state employees here.

Mr. Starns said no sir.

Mr. Ishmael said what I'm looking for in the Social Security column you've got it in the retirement contribution.

Mr. Starns said that's correct.

Mr. Ishmael said that's what I'm looking for. So, the \$247,000, is there anything being paid on Roger that is not in that \$247,000 number.

Mr. Starns said the only thing would be workers comp.

Mr. Ishmael said what about any unemployment insurance. You don't pay any of that?

Mr. Starns said no sir. We are on a reimbursement basis so if nobody claims unemployment, we don't pay anything.

Mr. Ishmael said right now you're not having to pay anything on him. So, if Roger got laid off and he drew unemployment, it wouldn't charge, back charge anything to the port.

Mr. Starns said oh they would.

Mr. Ishmael said oh, I know they would. Keep telling me a little more. I want to know because you see this factor, as it stands now, that's what this is. Let's just say if Roger got laid off, what kind of salary, and what he would draw. My question to you is it would add to that number wouldn't it?

Mr. Starns said it would. We don't pay it up front or monthly. It is only on a reimbursement basis.

Mr. Ishmael said I understand fully. So, workers comp and unemployment, both federal and state, am I correct, would be charged back should any employee be laid off and in Roger's case, then it would add to this \$247,000. Do you have any idea what that percentage would be?

Mr. Starns said I'm not exactly sure.

Mr. Ishmael said there are a couple of things I would like to have. I would like for you sometimes next week, I want you to pull me up on that on that basis. I want to know what the workers comp would be with him being in that position he's in, his rates are going to be lower than a man working on the railroad or out on the river. I would like to know that part on workers comp, I see where you're going with your retirement part of it, your Medicare I understand. I would like to know on the unemployment on the state and the federal, what kind of percentage there was and then that will give us a little money that we add to this \$247,000. On this disability insurance, if I'm right about, this is something that we pay for most of the employees at the port. Is that what that is?

Mr. Starns said yes, that is for everybody. That is a long-term disability policy.

Mr. Ishmael said that is what I'm interest in because I want to know what that \$247,000 is. This mileage reimbursement is strictly on the automobile and is nothing for his travel or any of the other items on the other sheets we have as far as travel, miscellaneous expenditures, and stuff of this nature. We will get into that at another time. My next item, I'm kind of on the same page as Larry. The comp is a very confusing situation that we really, in all of the past years, I personally never had to deal with comp. I think it was something that was kind of instituted in the last several years. Is that correct Al?

Mr. Starns said comp time is basically overtime. It has been within the Civil Service system I guess since early on. Generally, comp time, I don't think previous executive directors earned comp time, or not much. That's because the executive director has discretion as to whether he pays comp time or doesn't pay comp time, or whether he lets you earn it or not earn it. It's his discretion.

Mr. Ishmael said this one changed it in the discretion. It went this way and is now past three or four years. The Personnel Committee has been trying to get a grip on it and this is the furthest it has gotten so far. Mr. Chairman, one last statement, I am on the same page with Larry and to me this comp and the way this thing is going with a high priced salary employee who more or less sets his schedule, I think his comp is way out of line. I think where the salary is frozen, I also think this comp needs to be done away with, frozen, put on the side until this Commission can decide what they want to do with this.

Mr. Wilkinson said all right.

Mr. Watts seconded Mr. Ishmael's motion.

Mr. Wilkinson said Al, is that something the Commission can do or is that the discretion of the executive director.

Mr. Ishmael said we are fixing to take it with the Commission.

Mr. Starns said Commission can set policy.

Mr. Ishmael said we are going to set policy. It is something we need to control.

Mr. Starns said Right now there is basically no policy. It is wide open, based on the executive director's discretion.

Mr. Wilkinson said we have a motion and we have a second.

Mr. Johnson said surely that policy making is our decision. Regardless of what Roger's decision is, that's why you have a Commission, we set the policy and he carries it out. I have a problem, and I'm going to get back to what Roger's done. I have a problem with the salaries and raises that we've given Mr. Richard to come back and I have to look at this today. I'm here to tell you that I'm not happy at all. In 1997, and thirty years passed with Gary Pruitt, we didn't have any comp time. We've got a clause in Roger's contract, he has a clause, and the intent of it, he has to use them against this Commission and this port just for this right here. He has the same benefits as the employees. Now, I think he has taken advantage of this. He's setting the rules with no guidelines. We have to be the check and balance of Mr. Richard. In 1998, the port director starts getting comp time.

Mr. Ishmael says I take responsibility Larry for his salary being what it is, Mr. Chairman, because Bully can tell you, in the Personnel Committee meeting that I was responsible for three of his raises, bringing him up to competitive ports. However, I do feel at this time, and I will tell this Commission, Roger is a very smart man. I almost feel like I've created a monster in what I did because to be honest with you, I mean, we had a couple other state employees sitting on the Personnel Committee meeting and were concerned about the raises because no others were getting them. I stand here before this Commission and tell them I was responsible for three of them.

Mr. Johnson said I would like to finish up on my comp.

Mr. Wilkinson said we have two motions on the floor so go ahead.

Mr. Johnson said we have a motion and a second.

Mr. Wilkinson said we have two of them.

Mr. Johnson said on the comp time, I just don't think, oh I was getting back to the clause in the contract with Mr. Richard. Now, the intentions of that was not for him to be classified when he wants and unclassified when he wants, but that he could enjoy the benefits of retirement and medical. That's the benefits, surely, that I was thinking of when we approved the contract. And, I think that's exactly what it was for. Now, but in 1998, it started in 1998 with the CEO or the port director, starting earning comp time. And, this is Roger's rules. I don't agree with it. I want to second the motion with whoever says that they want to freeze the wages and freeze the comp time.

Mr. Wilkinson said we already have a motion and a second.

Mr. Johnson said okay, what's the other motion.

Mr. Wilkinson said we're going to freeze the salary. So, let's deal with the comp time first. Ms. Robertson.

Ms. Robertson said I would imagine that the unclassified employees are following the same system with comp time.

Mr. Starns said correct.

Ms. Robertson said my concern is this, I don't want our decision today to freeze, or whatever we decide to do, I would hate to see it frozen to zero. How would that affect unclassified employees? Do you see what I'm getting at? If we say executive director, you can't do this, well he may say well unclassified you can't do it either. And, I mean that's my concern.

Mr. Ishmael said would it work if I would put that in my motion, Lynn, Mr. Chairman?

Ms. Robertson said I don't know. We just need to give a little thought to it.

Mr. Johnson said we have given this a lot of thought, Lynn.

Mr. Wilkinson said I would say just limit your motion to the executive director and then we'll see where it goes from there.

Mr. Ishmael said that's what I meant, Lynn. And you know, and that way it would leave your unclassified on your base salary people alone because they basically don't have any comp time to amount to anything anyway.

Ms. Robertson said well, they might, I don't know.

Mr. Dragg said well Al, this vacation that he's not taken, now he'll get paid for that when he leaves.

Mr. Starns said either it will be transferred to retirement credit or that which isn't transferred to the retirement system, the port would be liable for it.

Mr. Dragg said so really, he's getting paid comp time because he's taking vacation, I'm sure of that. And all the time he's taking off and then charged to his comp time, well then he's not having to take any of his vacation, so he's double dipping.

Mr. Ishmael said and his sick leave too.

Mr. Starns said in the end, the port would be liable for the annual leave and the sick leave that the retirement system does not take to apply to his certain credit.

Mr. Dragg said right. So, really, he's getting paid comp time right now.

Mr. Starns said that's the way I see it.

Mr. Dragg said that is the only way you can see it.

Mr. Wilkinson said let's get Mr. Ishmael's motion, which was to do away with the comp time for the executive director, seconded by Mr. Watts. All in favor say I, any opposed, that motion is approved. Now we'll go back to the original motion, which was to freeze the salary for the current year.

Mr. Johnson said I move.

Mr. Watts said I second.

Mr. Wilkinson said Mr. Johnson moves, Mr. Watts seconded, all in favor say I, any opposed, that's also approved.

Mr. Johnson said Mr. Chairman, I would like for there to be an agenda item to further discuss Mr. Richard's discretionary funding, his travel, his expenses. I want it to be an agenda item to go to the executive commission. If there is anything else, I'll add it to it.

Ms. Robertson said I'm sorry, I didn't hear what he said.

Mr. Johnson said I want there to be an agenda item at another commission meeting to discuss Mr. Richard's discretionary funding, expenditures. He has discretionary funds of \$10,000.00 limit. I want to look at that and I want to look at all of the participation of the port, of what we sponsor, what it costs the port, all expenses involved. I want to know what we're participating in, all the activities, and what it's costing this port. I want his travel, I want hiring. Those issues are to be a part of that discussion. Do we want to get involved in setting the policy of hiring? Mr. Richard in the past has hired some people and I didn't know anything about it. Do we need someone that he's hiring? Or, we can look at him, and say, from the Commissioners that I've spoken to, they're not happy with the things he's been doing. So, I just think that we're not happy, we do two things. We address him for doing them or we make it a policy. And, I think that it's time for this Commission do their job and start setting policy for this port because it's a runaway train. State retirement system is broke, the state is broke, the school boards are broke, and I don't want to be in a position over here and I don't have the expenditures versus revenues. I don't like Mr. Richard's spending habits. Whether it be WeatherNet, or whether it be travel, I haven't seen any production of some of the travel. I'm not interested in, maybe

Mr. Richard going all over the world, and we haven't wreaked any benefits out of it. I just think, not that he can't do it, it's just that he needs to get permission to do it.

Ms. Robertson said I agree in that we may need to set up some type of policy but I would hate to see this board, month in and month out, vote on every single line item. And, as far as WeatherNet and those kinds of things, those things have helped this port. And, I really didn't realize that this port was in that big of trouble as it sounds today.

Mr. Johnson said do you want me to show you? I'll show you when we have the Commission meeting, I'll show you. I'll have those facts to tell you what this port has done.

Mr. Dragg said we would be in bad shape had we not sold Burnside Terminal.

Ms. Robertson said I realize that. And, I'm not saying that I disagree, I'm just saying that I don't want to come here and nit pick every single item. I would like to come up with a good policy.

Mr. Wilkinson said we do not want to get in a position where this Commission is micro-managing the port.

Ms. Robertson said that is my concern.

Mr. Wilkinson said nobody want to do that.

Ms. Robertson said that's what I'm saying. I have no problem with setting a policy on expenses and those kinds of things.

Mr. Johnson said well, I think if you're spending \$70-80,000 dollars, then I have some concerns on those expenditures. I would just like to share them with the Commission and let the Commission make that decision. And, you figure out how much you want to micro-manage. But, right now, there's no management. Not with this Commission. It's that, we give Mr. Richard, you do what you want, and I just disagree with Mr. Richard's spending habits.

Ms. Robertson said what I'm saying is when you do that, you do that when you set your budget. Maybe we need to look at the budget.

Mr. Johnson said the Personnel Committee recommended, I don't know if you know this, also to look at his expenditures and his spending versus revenues. That was done in the Personnel Committee, Lynn. We all supported that.

Ms. Robertson said we don't know what happened in the Personnel Committee.

Mr. Johnson said that's why I'm telling you.

Mr. Ishmael said but Lynn, how long ago did we try to get that Bully, four or five years?

Mr. Dragg said four or five years.

Mr. Ishmael said we haven't gotten it yet.

Ms. Robertson said right, and I'm not disagreeing with you.

Mr. Johnson said I'm not for everyday decisions, but when you start talking about hiring, the last time we hired the engineer, we were the last ones to know about it. I don't want to give Mr. Richard that kind of authority anymore. I'm not happy with his expenditures.

Mr. Wilkinson said okay, everybody's had their say. Let's move on to the financial report, Mr. Starns.

Agenda Item 12 - Financial Report

Mr. Starns gave the monthly financial report and all Commissioners were provided copies. He opened the floor to questions. None were asked.

Mr. Wilkinson said the Personnel Committee requested a revised budget, and then we'll scrub the budget and see if we can't do better than what our budget projects for 2005. You should be receiving a revised budget in the coming months.

Mr. Ishmael said Mr. Chairman, Al, you do understand I want a copy of that comp.

Mr. Starns said yes sir, you want the workers comp rate and what it would cost for Mr. Richard.

Mr. Ishmael said yes, but I also want a copy of the comp time that has been turned in the last couple of years. The timesheets. I want to see what the items are, what it's attached to, what projects.

Mr. Starns said for the last two years.

Mr. Ishmael said yes, that should be sufficient.

Agenda Item 13 - Report by Attorneys

There was no report.

Agenda Item 14 - Other matters

Nothing was reported.

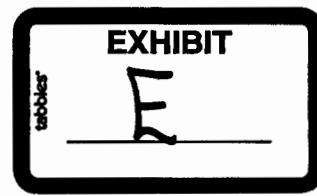
Agenda Item 15 - Adjournment

The meeting adjourned at 5:58.

Secretary: _____ President: _____

Date accepted: _____

GREATER BATON ROUGE PORT COMMISSION
Commission Meeting
5:00 p.m. Thursday, May 26, 2005



The Greater Baton Rouge Port Commission met in regular session at 5:00 p.m. on Thursday, May 26, 2005 at the Commission Offices in West Baton Rouge Parish, Louisiana.

Following the Call to Order and the Pledge of Allegiance, the roll was called.

PRESENT

Mr. Brian
Mr. D'Agostino
Mr. Delpit
Mr. Dragg
Ms. Ferdinand
Mr. Hurdle
Mr. Ishmael
Mr. Johnson
Mr. Rigell
Ms. Robertson
Mr. Tillis
Mr. Watts
Mr. Wilkinson

ABSENT

Mr. Pugh
Mr. Thibaut

Agenda Item 4 - Approval of minutes of a Regular Commission meeting held on April 28, 2005.

Mr. Dragg moved for approval, seconded by Mr. Brian, and the minutes were approved unanimously.

Agenda Item 5 - Update on the Ormet bankruptcy proceedings with discussion and possible action. Ormet has issued the port 4,185 shares of common stock with a par value of \$.01 each in their "initial distribution" of 63% of the common stock.

Mr. Starns said we received the shares of stock from Ormet and have now received several offers from brokers and/or buyers of stock from the Ormet bankruptcy proceedings. At the executive committee, the recommendation was that the Board allow Mr. Richard and Mr. Glusman to proceed with trying to negotiate with these companies to see if we can go ahead and sell the stock at the best price that is being offered out in the market today. We had an initial offering ranging from \$150.00 per share up to \$175.00 per share. All of the companies are still interested. Mr. Starns asked the Board to consider the recommendation of the Executive Committee to allow the executive director and attorney to go ahead and proceed with trying to sell the stock we have plus the additional claim that has not been issued yet. There is probably about 30% more of additional stock that will be coming. I believe we can go ahead and sell that claim as well. Does anybody have any questions?

Mr. Wilkinson said any questions. You heard the recommendation. Is there a motion?

Mr. Rigell moved for approval, seconded by Mr. Watts, and the motion passed without objection.

Agenda Item 6 - To consider making adjustments to the 2005 budget. Staff has prepared a revision as requested by the Personnel Committee.

Mr. Starns said we have in your packet, proposed cuts to the budget for the 2005 fiscal year. We have a summary page and then a page showing proposed revenue cuts, and then we have two pages behind that showing proposed expense cuts, and the last page is a page showing proposed cuts in the capital equipment budget for the year. I don't know exactly how much detail you want to go through on this. If you want me to give you the summary and then if you have questions, then we can go into the detail if you want to. From the revenue budget, we are proposing we cut \$102,843.00 from various facilities, with the primary one being the Inland Rivers Marine Terminal at \$153,500.00. There are several that increased as we looked at the budget, and several decreased. But the overall net effect is a decrease of \$102,843.00. That would adjust our overall budget down from \$5,263,096.00 to \$5,160,253.00, for a cut of about 1.95% overall. So, that is the revenue side. Does anyone have questions on the revenues?

Mr. Tillis said what is the total cut? Is it \$100,000.00?

Mr. Starns said it is \$102,843.00.

Mr. Tillis said where is that coming from?

Mr. Starns said we have an adjustment column on the second column, second from the right.

Mr. Rigell said Al, how were these adjustments arrived at?

Mr. Starns said the marketing department, Mr. Richard, Mr. Hardman, and myself all got together and talked to tenants and customers to see what they expected business to be like for the remainder of the year.

Mr. Wilkinson said the expense side?

Mr. Starns said on the expense side, we had cuts in several different categories. Overall proposed decrease of \$440,763.00. That included reductions in salaries and wages of \$98,871.00; reduction in advertising of \$33,300; reduction in the consulting category of \$50,000.00; reduction in the dredging of \$100,000.00, which was the entirety of that budget.

Mr. Watts said wait a minute. If the Corps of Engineers tells us to dredge, we have to dredge. You aren't cutting anything there.

Mr. Richard said we will come back to the Board and tell the Board. What it is, we plugged that in every year, about \$100,000.00, and sometimes it is two or three years before we have to dredge. So, what we can do is come to you with a proposal that we have to dredge so many cubic yards, go out for bids, and then have it approved by the Board, and add it to the budget.

Mr. Watts said I understand that but you're saying you're cutting this out of the budget. You're not cutting a thing because if they say we have to dredge tomorrow, we have to dredge tomorrow.

Mr. Richard said it's what we decide to do, not what the Corps wants us to do. We dredge 200 feet out from the dock face. We're getting surveys done now to see what the level is. We have always carried it before. We can do whatever is the pleasure of everybody here. We used to carry it that way before.

Mr. Wilkinson said, what I would suggest, why don't we accrue each year \$35,000.00 or \$50,000.00. If we have to do it every third year, we accrue \$33,000.00 a year.

Mr. Richard said but you could do it every year. It depends on what the river does.

Mr. Rigell said well, if it's a contingency that we might have to face, why not just leave it in the budget, Roger?

Mr. Richard said that is perfectly acceptable with staff. We can leave that in there.

Mr. Watts said I can't see where they are cutting anything. That's \$100,000.00 they say they're cutting, but if we don't have to dredge, if they said we have to dredge tomorrow, then we have to dredge.

Mr. Wilkinson said the consensus of the discussion says we are going to leave that item in the budget.

Mr. Richard said that is fine.

Mr. Starns said, going down to the next item would be a cut in the education and training budget of \$15,000.00. Then we've cut the group insurance budget by \$11,000; the materials and supplies budget by \$10,500.00; a reduction in the social security retirement deferred compensation category of \$7,092.00; a reduction in the trade development and port promotion budget of \$5,000.00; reduction in travel of \$10,000.00; we take out the economic impact study of \$40,000.00 and not do that this year; to reduce the miscellaneous category by 50% or \$5,000.00; and then the last would be the reduction of the contingency by about \$55,000.00. Overall reduction as originally proposed would have been a 9.34% reduction in the expenses. Considering that we are going to leave the \$100,000.00, that would be quite a bit less. The last page, the capital equipment expenditures, various departments submit requests for items that they think they will need to purchase during the course of the year. We made cuts to all of those categories. We reduced the administration request from \$40,500.00 down to \$28,500.00; buildings and grounds from \$125,200.00 down to \$99,200.00; maintenance auto shop repair area from \$56,000.00 down to \$16,000.00; the railroad department from \$50,000.00 down to \$10,900.00. Reducing our request from \$272,600.00 down to \$154,600.00. I will be happy to try to answer any additional questions that you might have.

Mr. Wilkinson said going back to the income of the \$153,000.00 on Inland Rivers Marine Terminal, is that a facility that hasn't come on line?

Mr. Starns said that is primarily what it was. We expected it to come on line earlier and it just hasn't materialized to the extent that we thought it would. But, we are anticipating that it's really beginning to get to the point of really picking up at this stage of the game.

Mr. Johnson said I would like to briefly go through some of the items. Roger, you've reviewed the budget, and this is your decision, as our CEO, where cuts in the budget need to be made. You've reviewed the budget and this is where you feel the cuts need to be made.

Mr. Richard said yes sir. We can live with this. That's correct.

Mr. Johnson said I want to go to salaries and wages. The \$98,871.00. What does that represent? Does that represent cuts? New hires?

Mr. Starns said we had two positions that were budgeted that we had not ever filled. One was marketing assistant and one was in the public relations area. We've never filled either of those positions. Since we've not done that, we figured that we could at least take those out of the budget. We also looked at not increasing the salaries for the unclassified for the coming year.

Mr. Johnson said so the \$98,000 is from?

Mr. Starns said two positions and no merit increases for five staff members.

Mr. Johnson said okay. I agree with the \$100,000.00 that we need to keep in. It's not a true cut. We haven't done our sounding yet. I think they're doing the sounding right now. It may not be the Corps decision. But if we can't get our ships in with the low river, it's something that absolutely needs to stay in the budget. So, that's not a true cut. If we need to, it has to stay in the budget. I see where the rest is economic development studies. Contingencies. We have \$90,000.00 in contingencies.

Mr. Watts said what is contingencies.

Mr. Johnson said I'm going to let Al tell us. When you put \$90,000.00 in a budget, is that on contingencies, is that something that has to be approved by the Commission.

Mr. Richard said sure. Absolutely.

Mr. Johnson said anything that is a contingency has to be approved by the Commission.

Mr. Richard said absolutely.

Mr. Johnson said okay, I'm good with it. I just want to make sure that, and I don't exactly agree with.

Mr. Watts said what are the contingencies I asked?

Mr. Richard said in case something happens. In case we need it, if something comes up, unanticipated expenses of that type.

Mr. Johnson said I'm surely going to vote for this but I'm not sure that I agree with where all the cuts are coming from. That's all I have to say.

Mr. Wilkinson said, based on a percentage basis, we have a big cut in consulting fees and expenses. What is that?

Mr. Starns said consulting fees. That is \$50,000.00. That is if we want to do a study, like an economic impact study or some other feasibility study. If a new company comes in and they want to try to locate here within our jurisdiction then we might have to do some studies, do some research to make sure that it is a feasible project.

Mr. Wilkinson said so staff feels like we can get it done for \$25,000.00.

Mr. Richard said yes, with the exception of what we have pending.

Mr. Tillis said we have \$40,000.00 for economic impact study so what you're saying is you have two items for the same thing.

Mr. Richard said no. The economic impact study is what is the value of the port to the community. How many jobs. Things like that. But, we think we can delay it until next year and do that separately.

Mr. Starns said in the past, we have used that category for such things as that. We didn't break out the economic impact study separately. We didn't do that this year.

Ms. Robertson said I would like to try to go back to what you were talking about. Don't we have an insurance reserve fund?

Mr. Starns said we have a reserve center assigned for our deductibles. Remember that the insurance deductibles went up to \$250,000.00.

Ms. Robertson said maybe we can do something like that for the dredging if we don't use the whole \$100,000.00. Leave it in the budget, don't use the whole \$100,000.00, and maybe start some sort of reserve fund for dredging.

Mr. Richard said I agree. I suggested that six years ago. We really should have a reserve for dredging because when the water drops like it did, \$100,000.00 may not be enough. You may have \$300,000.00 of dredging to do. Our average has always been around \$100,000.00 to \$125,000.00. That doesn't mean the worse can happen. The worse can happen out there so it would be a good idea to have a dredging reserve out there.

Mr. Ishmael said the adjustments on salaries and wages, that \$98,000.00, you said that was for two new people that we were planning to hire that didn't get hired. Is that what that number is?

Mr. Richard said that is two positions that are authorized by Civil Service on the books. We had them in the budget in case it was ever needed but we never filled the positions.

Mr. Ishmael said so that's what makes up that \$98,000.00.

Mr. Richard said part of it.

Mr. Starns said the largest part of it.

Mr. Delpit said the group insurance. It's a small item, but did we change carriers. How is everybody's insurance going up and yours is going down by \$11,000.00.

Mr. Starns said the way we budget for that is the group insurance premiums increase on July 1 with the state's fiscal year and I am preparing the budget back in August and September so I'm just trying to give them my best guess as to how much it's going to increase. Sometimes I guess a little bit more. So, this particular year, I did guess more so we can reduce it a little bit.

Mr. Wilkinson said the increase was not quite as big as we expected.

Mr. Rigell said, Al, Roger, if we cut the budget for those positions that are not filled, do we lose those positions?

Mr. Richard said no, they stay on the Civil Service list.

Mr. Johnson said the point I'm trying to make over here, when we cut, you're actually cutting the budget because that's what the amount we had budgeted for this year. But, if you look at it, and take the \$100,000.00 out and then, we're cutting two positions that we didn't have, we cut \$55,000.00 out of \$90,000.00 that is not an actual expenditure unless we need it, I just don't see real cuts. I just see, of our actual expenditures, and that's some of my concerns. It seems like we are cutting something that may happen. If we have to do any dredging, you're right, it seems like it should be more like \$200,000.00. Or, \$100,000.00 this year and \$130,000.00 next year. I agree with Lynn on that. I don't see real cuts. What I think of what I've seen of the expenditures, I just kind of disagree with where the cuts are.

Mr. Dragg said what you're saying is that there are no hard dollars being cut.

Mr. Johnson said no, there are no hard dollars being cut. I think we've addressed some of the things that we are concerned about and I just don't see the cuts.

Mr. Richard said the staff got together and we all went through it together, not just one person but the entire staff, and felt that whatever is left is what is going to be needed to run the port properly for the rest of the year. We certainly follow the direction of the Commission. If the Commission tells us to cut something, the staff doesn't have a choice but to cut. But, this was our best guess at how it could operate at a reduced budget. We have never spent all the money in the budget. Never in history. The budget is your best guess of what the year is going to look like income and expense wise. But sometimes you play conservative on the income and you play very liberal on your expenses so you have it covered. So, it was never spent in the past and was never intended to be all spent here. Only in case it had to be spent. The staff is open to anything the Commission tells us to do.

Mr. Wilkinson said Al, this proposed budget adjustments of \$337,000.00 would be added to the budgeted, well, budget for this year called for a net operating profit of \$547,000.00. This would be added to that. It would be roughly \$890,000.00.

Mr. Starns said if you back out the \$100,000.00, it would be \$785,000.00.

Mr. Wilkinson said right, but we are going to leave the \$100,000.00. I think everybody agrees that we are going to leave the \$100,000.00 in as a reserve.

Mr. Richard said so, it would be \$785,000.00.

Mr. Ishmael said on WeatherNet 2 for \$45,000.00 budged for 2005, I see no proposed adjustments. Is that going to stay?

Mr. Starns said yes sir. That is under contract until the end of the year.

Mr. Ishmael said the end of the year. Okay.

Mr. Watts said so that doesn't go into advertising.

Mr. Richard said no, WeatherNet was approved by the Board as a separate item.

Mr. Wilkinson said I've asked some questions about that one. We have a contract that runs through October. We will revisit that issue in October on whether we want to continue that.

Mr. Wilkinson asked if there were any other questions or comments.

Mr. Watts said about this advertising, we had budgeted \$175,000.00, and we cut \$33,000.00. What are advertising so much for?

Ms. St. Cyr said I would be glad to try to explain it to you and I'm still working on some of the spreadsheets. Basically, we are taking \$33,000.00 in cuts to the advertising budget. Our advertising budget here at the port, it goes from concept all the way to printing. This includes printing costs on a lot of our collateral material. It includes project costs for videos. We're moving more into the e-commerce, if you will, we're working on a new website, and so we have taken these categories and reduced them. The port's direct media placement, if we go and place in magazines, is \$58,000.00 of that \$170,000.00.

Mr. Richard said maritime trade magazines.

Ms. St. Cyr said we have cut that area too. We have a new trade show booth that we were going to work on this year. We cut that. We had some updated video loop that we were going to do for the new Inland Rivers Marine Terminal. We cut that. We had some site sheets and economic development type marketing sheets that we were using with the Department of Commerce. We're going to redo that. We cut that. This is a very bare bones budget at this point since we're already into it for six months. We go in early fall and buy our media for spring and then we do it again in the summer so some of the cuts to the media will occur in October.

Mr. Richard said the things like WeatherNet, you will get to see that again at the Board level like it was all in the past. The Board always saw that and approved that.

Mr. Watts said I understand that. But, my problem is we don't do any business with the local public in any stretch of the imagination.

Mr. Richard said no but we advertise in various port publications, shipping lines.

Mr. Watts said I understand that. We do a lot of advertising in Baton Rouge and around and we don't get the business.

Ms. St. Cyr said we do advertise in the Baton Rouge Business Report. We basically have a good partnership with them because they produce that nice booklet on the port every year, which is our annual report to the community. We do advertise in some of their sections like real estate or their industry section because those are the markets around here that we are trying to reach.

Mr. D'Agostino said Karen, let me answer some of that too. It is essential that we advertise in the Baton Rouge community and the parishes we represent because we have an image situation where we have got to keep in front of the Legislature, we have got to be in front of the economic development people, and we have to be in front of the citizens. And, so, I think it is essential and I think if we cut any of our local advertising we will suffer the benefits of the results of that in a strong way. The local image is just critical to this port. And, we have got to keep that going. We have always fought an image problem where no one even knew this port existed and I think over the last several years we put in a big effort to try to make people understand what the economic impact of this port was, how many jobs, and how critical it is to the economy of this community. We have got to continue to do that and if anything, we need to increase the budget on that.

Ms. St. Cyr said another area that we're doing adverting in the local area is at the local chambers of commerce. You know, the West Baton Rouge Chamber has a directory, Iberville, and Ascension, Baton Rouge. So, we try to support those economic development publications.

Mr. D'Agostino said I think some of our budget is a joint venture with the Department of Economic Development, doing things with them, which again as all the ports in the state of Louisiana do. You know, we have got to be a partner with the Louisiana Department of Economic Development and participate in those activities.

Mr. Delpit said the television spots with the public service, are we paying for those?

Ms. St. Cyr said we are paying \$42,000.00 a year for Weather Net 2 sponsorship. The value of that if we were a private company is over \$300,000.00. We have been working on marketing and communications plans to do branding for this port. You know, recognition, branding. And, research showed that the T.V. and commercials are the best form of promotion and advertisements.

Mr. Delpit said can we track any direct business to any of the advertisement that we have paid for?

Ms. St. Cyr said Mr. Delpit, I don't think I can. I mean, if you say someone called in on the phone and said I saw your T.V. commercial, then I could tell you that. But, you know, I think that if you're going to do advertising you have to stay up at a top awareness. You know, if you don't, you're just really wasting your money if you don't do that. I want to go back to WeatherNet for just a minute. We pay \$42,000.00 a year, which is \$3,500.00 a month and this is a partnership with Channel 2. It would cost a lot more money if we were

going out and directly purchasing the commercials. They run about 408 times a month. Some of them are at primetime. And, if you look at the commercial long enough you will see we're advertising our container on barge operation. You say, does advertising on T.V. help? Yes, it does. One of the first shipments through the Barge Terminal was rice from Mermentau. We based all that on the cable channel that we had broadcast it to the media, on a statewide basis.

Mr. Delpit said do we have an advertising agency under contract?

Ms. St. Cyr said yes sir we do. It is Diane Allen and Associates.

Mr. Delpit said who is it.

Ms. St. Cyr said Diane Allen and Associates.

Mr. Delpit said how much are we paying them?

Ms. St. Cyr said we pay them per project.

Mr. Delpit said how much did we pay them last year?

Ms. St. Cyr said I would have to go back. Ad agencies are paid on a percentage basis.

Mr. Delpit said spots that are placed.

Ms. St. Cyr said if they go out and buy media for you, then they receive 15% of the total of that.

Mr. Delpit said do they produce it for us? Who produces?

Ms. St. Cyr said they produce it for us and they also go out and buy media on a block so we get a lower cost than if we went and bought it ourselves. Diane Allen has been the port's ad agency for 18 years and they have been doing a great job. A lot of this ad budget is printing, and development costs to get this stuff to look the way we want it to. Every ad that goes out of here you have to sign a contract on it, you have to get the exact amount of size for the advertisement. If I had to estimate what they earned from the port last year I would say it was \$40,000.00.

Mr. Delpit said you're pretty close to that \$175,000.00, with all the things you've pointed out to us.

Mr. Tillis said ya'll have done a good job with this. Is this the cutting that you do, do you feel you can do a little better, can you cut a little better?

Mr. Richard said the staff felt this was about as far as they can go and I feel it is a workable budget where it is at. I think it is a good start. It doesn't mean it is going to be spent. We will spend it if we feel it is necessary to spend.

Mr. Tillis said it's a good start. So they feel this is the best that they can do at this point?

Mr. Richard said that's correct.

Mr. Johnson said on that \$42,000.00, that contract with Diane, do we pay 15% of that.

Ms. St. Cyr said do you mean the WeatherNet 2, the \$42,000.00. I don't believe so but I will check for you.

Mr. Johnson said I'm just being curious. It's not a big thing.

Mr. Wilkinson said are there any other questions or comments.

Mr. Johnson said I just don't think we have done any real cuts to amount to anything.

Mr. Wilkinson said we entertain a motion to adopt the revised budget.

Mr. D'Agostino moved for approval, seconded by Mr. Rigell, and the motion passed without objection.

Agenda Item 7 - To consider trackage right agreement for Novus International to transfer bulk products from railcars to trucks.

Mr. Greg Johnson said Novus International is a company that was dealing with Ramsay Scarlett who is no longer a tenant of the port. They have sold their company and the company that took over did not want to continue its relationship with them. They are asking us the trackage rights to bring in railcars, bulk railcars to transfer bulk products, and they are trucked to deliver to customers in this area. It is roughly 300 railcars a year. This would mean about \$75,000.00 worth of income to the port. Their product is chicken vitamins, which is an enhancement growth vitamin for chickens. It is a pretty innocuous substance.

Mr. Dragg moved for approval, seconded by Mr. Brian, and the motion passed without objection.

Agenda Item 8 - Governor Blanco's appointment of Roger Richard to the Louisiana Maritime Task Force

Mr. Wilkinson said this is informational. Mr. Richard, do you have any comment.

Mr. Richard said no comment. This is just for information.

Agenda Item 9 - Monthly Engineering Report by Pyburn & Odom

Mr. Thomas said he had nothing to add to the report that was presented and discussed at the committee meetings and mailed to the members. All of the projects are going good and the river is dropping. It is about 11 ft. and hope it gets to 7 ft. so we can finish up the project on Dock No. 1.

Agenda Item 10 - Monthly Engineering Report by staff.

Mr. Polansky said our report was submitted and approved by the Engineering and Executive Committees. He opened the floor to questions. None were asked.

Mr. Watts moved for approval, seconded by Mr. Tillis, and the report was approved.

Agenda Item 11 - Update on property acquisition.

Mr. Hardman said we have offers in for both the Hewes and Mahaffey tracts of land over on the Intracoastal. Mr. Barry Wilkinson and myself met yesterday with their attorney and one of the heirs of the Hewes tract. We think we have made some progress in at least coming closer to where we would like to be on it. We explained to them that we do not have the ability to go outside of the appraisal, or above the appraisal, and our offer, and explained to them how we thought the appraisal was fair and equitable offer. They have also approached us with a possibility that they may have access along Northline Road. This is a piece of property that is closest to Northline Road. We asked them to pursue that and come back and present their findings to us. In light of the fact that the appraisal was done on that particular piece of property without there being access to Northline Road. Mr. Wilkinson, do you have anything further to add.

Mr. Wilkinson (legal counsel) said no, you summarized it very well. Without access, the property is worth one value, and with access to Northline Road it definitely has a higher value. They are trying to establish and substantiate that access and that is what the delays have been and that is what they are continuing to work on.

Agenda Item 12 - Consideration and appropriate action concerning authorization to advertise for bids for Centerpoint Terminal Expansion.

Mr. Polansky said we have been working closely with Centerpoint on the Terminal Expansion under the Port Priority Program. We look like we will be ready to go out for bids by next month. The plans are just about finished for us to review in conjunction with Pyburn & Odom. I am asking for authorization to advertise for bids.

Mr. Dragg moved for approval, seconded by Mr. Brian, and the motion passed without objection.

Mr. Wilkinson said as an item of information, I have appointed a Policy and Oversight Committee. The members include myself, Larry Johnson, Calvin Ishmael, Alvin Dragg, and Randy Brian. The committee is going to look at all of our policies and make recommendations where deemed necessary, and act as an oversight committee in particular with regards to compensation.

Agenda Item 13 - To discuss establishing an Oversight and Policy Committee to establish Mr. Richard's authority and the Commission's authority. This committee will include port's legal counsel. Members appointed by Mr. Wilkinson include Larry Johnson; Calvin Ishmael; Alvin Dragg; Randy Brian; and Mr. Wilkinson as chairman.

Mr. Wilkinson said the next item is to review and take appropriate action concerning Mr. Richard's proposed contract for this year.

Agenda Item 14 - Review and appropriate action to be taken concerning Mr. Richard's contract regarding compensatory leave and benefits.

Mr. Wilkinson said Mr. Richard and I met and we agreed on a draft of the contract, which would leave compensation, salary unchanged for the year, and would eliminate compensatory time prospectively. That is the contract that we agreed to and want to bring to the Commission for consideration.

Mr. Johnson said did we have a copy of that contract.

Mr. Wilkinson (legal counsel) said which one Mr. Johnson.

Mr. Johnson said the one ya'll agreed on.

Mr. Wilkinson said the compensatory time prospect.

Mr. Richard said the new one you just drew up.

Mr. Wilkinson said the one you drew up today.

Mr. Wilkinson (legal counsel) said the one I drew up today, what I did, and what I understood my instructions were, were to prepare a contract as I appreciated what the Commission's wishes were. I have it prepared essentially with the language that has it, what I call prospectively, and in a manner that rescinded and forfeited and terminated the accumulated comp time. In talking with Mr. Richard, he indicated that that was not his understanding and he certainly had not agreed to that. I drew it up that way because that is the way I understood, at least during the last meeting, that those people who spoke out indicated they wanted that to be that way. Again, in speaking with Mr. Richard, he indicated that that is not what he agreed to in terms of the forfeiture of it. The portion about prospectively, it wasn't confirmative with what he understood.

Mr. Richard said and no monetary value. That's based on discussions I've had with Carter. That's the only thing I'm saying.

Mr. Wilkinson said what we've discussed was doing away with the compensatory time prospectively and eliminating any monetary value for it. Mr. Richard didn't agree to retroactive termination because we didn't discuss that.

Mr. Richard said right.

Mr. Wilkinson said so if somebody wants to bring it up this is the time to bring it up.

Mr. Watts said yes, I want to bring it up because we've got these time records back here and on August 23, 2004, I mean August 27, 2004, we were charged, at the Chamber interviews, he charged us four hours comp time, for interviewing somebody for the chamber of commerce. I don't understand that. You charged us eight hours for working here, and it's got here, you signed this, it's eight to five at the chamber interviews, seven to ten dinner at Juban's restaurant. A high dollar restaurant. I can't find the receipt for the night before. You interviewed the same man, on our time, and charging us. I will never vote for that.

Mr. Richard said that's fine. It was mainly because it was doing civic duty. That's all.

Mr. Watts said how are you charging us money to do civic duty. Why didn't you pay for it?

Mr. Richard said we can. It has no value anymore, we took the money value away from it.

Mr. Watts said the \$193.00 is a value to me.

Mr. Richard said we took it away. There is no more value to it.

Mr. Watts said what do you mean you took it away. We paid this restaurant bill. Juban's Restaurant \$196.36.

Mr. Richard said we agreed we would take the guy out to dinner as part of the economic development package we work with the chambers on. I would have done it for the West Baton Rouge Chamber also.

Mr. Watts said you also said in a meeting not long ago, last month, that you were going to spend about one hour a week when you got elected to the president of this deal. Right here, you signed it, that 16-20 hours a week you spend.

Mr. Richard said they went a year without an executive director and CEO of the Chamber.

Mr. Watts said that's not our problem.

Mr. Richard said I'm not arguing the point.

Mr. Watts said we're paying, this Board is paying for you to go over there, and then you're charging us comp time. That ain't right.

Mr. D'Agostino said I disagree. I think we have a role to be part of the community and to be active in all the four chambers that we represent and you know it's good for the port, it's good for our image, it's good for business, it's good for all of the political things that go along with it to be an active part of this community. We can't operate in isolation. If we operate in isolation, and just do, hide in our little hole here, we will go out of business. I promise you that.

Mr. Watts said you're saying we are going to spend all this money at Ruth's Chris Steakhouse and Juban's.

Mr. D'Agostino said I'm not saying that.

Mr. Watts said yes you did. You just said that.

Mr. D'Agostino said no, I'm saying it's critical that we participate in these activities.

Mr. Watts said no, it's not critical for us to spend all these big dollars at these high dollar restaurants. It's not critical.

Mr. Johnson said I want to interject on that Charlie. Surely I agree that we should have some communications and some lunches. Let me tell you what Bobby just said. Bobby read that on the 28th of August. Read his explanation. Before I want to ask Roger a

question. On the 27th, I see where, I don't have my list with me, but on the 27th of that particular day that he's talking about, I want you to listen close Charlie. On the 27th, which was a Friday, I see where you had dinner with a chamber. What was that all about?

Mr. Richard said that was an interview, I believe, on a Friday.

Mr. Johnson said where did ya'll go for dinner?

Mr. Richard said I don't have it in front of me.

Mr. Johnson said okay, we don't have that one.

Mr. Richard said we might have met at the chamber too, if it wasn't dinner, I don't know.

Mr. Johnson said all right. I'll follow up on that. But, if it was a dinner, I'm sure you weren't at the chamber. And, on the 28th, was a Saturday, Charlie. An interview with the chamber with a CEO. Read it. This is very important.

Mr. Watts said dinner at Juban's Restaurant with Mr. Michael Barnes.

Mr. Richard said the guy was flying in and he was flying in for the interview on the weekend, and the chamber was looking for somebody to work with them and help them take him out and show him around town and buy him dinner. I thought the port could do something like that.

Mr. Johnson said read it.

Mr. Watts said Mr. Michael Barnes, applicant for the job of CEO of the Greater Baton Rouge Chamber of Commerce. We hosted dinner to help promote economic development and to foster an attitude that Baton Rouge is a great place to live, work and enjoy a great lifestyle. Mrs. Richard attended to answer any questions for a woman's point of view for him to carry back to his wife and son.

Mr. Johnson said that is four hours comp time on a Saturday. We were charged four hours comp time for that. I have a serious problem with that. Dinner the night before interviewing most probably. That's what he says. Dinner. I don't have it. We'll see.

Mr. D'Agostino said I'm not saying I'm defending comp time. I'm saying we have to be a participant and do these things. I didn't say anything about comp time.

Mr. Johnson said but do you agree with that.

Mr. D'Agostino said I agree with taking part and going on and doing these things. I don't necessarily agree with getting comp time. When he's working on Saturday, and he's doing something on Saturday.

Mr. Johnson said how about every lunch and every dinner for seven years.

Mr. Watts said every one. How about most Tuesdays, here's one on September 9, 2003, 7:00 am Chamber Executive Committee lunch to 5:00 pm, two hours comp time. Never showed up here. Are we supposed to do that? No, that's not right.

Mr. Delpit said I need some clarification from legal counsel. Does the contract say that this port commission should pay for any employee that works here, particularly those that are making salaries in the ranges of what we're paying, to get paid extra to do civic duties. And, I agree also with Charlie. We should do civic duties. But, are we paying salaries that should be a part of the job description to do anyway. I mean, that's the way I see it. The kind of money we're paying around here when I look at these budgets. I need to know, what does the contract say? Does the contract say we are to pay this or not?

Mr. Wilkinson (legal counsel) said the contract doesn't address that specific issue. It does not even address the issue of comp time in its current contract.

Mr. Delpit said so, if it's not in the contract, that means that it's not allowed.

Mr. Wilkinson (legal counsel) said not necessarily. There is a, what I would call a catch all phrase that says that the executive director shall have participation in all port and state benefits. And, I'm reading from my new draft so bare with me. In the current formats and Civil Service afforded other port employees. And, I believe it would be that phrase that would potentially cover comp time. There is some question as to whether comp time is considered a benefit, per say, or whether it is a function or factor of salary. I'm of the opinion that it is more a function of salary and wages than it is a quote benefit. Under the draft I had presented for possible execution, we had eliminated and deleted the words Civil Service because that language, though that phrase was inserted in the contract in January 1992.

Mr. Wilkinson said 2002.

Mr. Wilkinson (legal counsel) said 2002, excuse me, in response, I thought and assumed at that time, to an audit by the legislative auditors in the prior May, May of 2001. So, I felt like it was appropriate sense there had been no real, if you will, bargaining or discussion with the Commission, I felt it appropriate to remove that phrase and still do. To answer the question directly, no, the contract does not speak directly to the point of compensatory time.

Mr. Delpit said does the contract deal with anything with job duties and functions.

Mr. Wilkinson said yes sir.

Mr. Delpit said does it say anything about doing volunteer work for outside agencies that should be covered by this Commission.

Mr. Wilkinson said no sir. It does not dictate, mandate it, or address whether it is to be with or without compensation.

Mr. Delpit said the compensation package is based upon duties performed for this port. Is that accurate?

Mr. Wilkinson said yes sir.

Mr. Delpit said thank you.

Mr. Tillis said if there are some things in the contract that we need to take out, why don't we just take them out, and clearly, it would make it very clear, like those type things. If they are not accepted, let's take it out.

Mr. Richard said we agree with you.

Mr. Wilkinson (legal counsel) said that's exactly what we were trying to do. I was trying to have it completed for today. Let's start off with the premise. In order to change the contract, you have to have mutual consent. Neither party can unilaterally change his contract. I feel it was unilaterally changed in 2002 with no ill intention, based on my knowledge of the facts as I knew them at that time. I think it is definitely appropriate to change that. Unilaterally.

Mr. Tillis said if Roger agrees, and we sit down and we can come up with something. Well, let's do that.

Mr. Richard said I don't have a problem.

Mr. Wilkinson (legal counsel) said I am also of the opinion that the Commission can take away comp time.

Mr. Wilkinson said read the language that Roger has not agreed to.

Mr. Wilkinson (legal counsel) said the way I had redrafted the pertinent section is the executive director and chief executive officer compensation shall be as follows. Participation and all port and state benefits afforded other unclassified port employees including but not limited to holidays, insurance, retirement, annual and sick leave, each of such leave benefits shall accrue at the rate of 14 hours per month. The CEO shall not be entitled to receive compensatory leave time for hours worked outside the regular working hours of 40 hours per week. That was entirely new and Mr. Richard, as I appreciate it, has agreed to insert that. The next phrase is what he has not agreed to. And all accumulated credit for compensatory time received by the CEO prior to the date hereof is hereby forfeited, terminated, and cancelled.

Mr. Richard said the reason is we didn't discuss that.

Mr. Wilkinson said we did not discuss that.

Mr. Richard said we did not discuss that. That is my only reason. We should sit down and talk about it.

Mr. Dragg said what do you think about it Roger?

Mr. Richard said I don't have a lot of problems with it but the hours on there, we're talking about just me or everybody else. We have to know how to be guided here. I mean, Carter and I, in talking with the president, and having a basic let's see where we're going to go with this, it was our opinion, and I think Carter will agree, I can't speak for him, that what happened in the past is grandfathered. And, all that time was never intended to be used. I lost, for instance, 780 hours of comp time over the last five years. I just gave it up. Never wanted the value for it. I sat here and said take value away. I wrote the memo. I said take

value away. There is no value comp time for me or any other employee. To me, it's an issue that we've agreed to everything so far, everybody wanted.

Mr. Ishmael said I have a few things I'd like to say and a couple of things I'd like to have. I don't know if the rest of the Commissioners probably want this but in this committee that you've set up, as I understand it, the way this thing was brought up at the last meeting, this committee was going to look at policy and look at everything that's being discussed in his contract. I wasn't aware that the contract was going to be drafted before we met and started discussing this. I think that the committee probably needs to look at some of it. Get all of this information. But, in gathering this information, there is something I'd like to have Barry get for me. I think it should be to the committee. Probably every Commissioner should have a copy of it. Barry you've been drawing these contracts since you've been here, after Fred Belcher. They had Dutton, they had Gary Pruitt. They had the first contract of Roger's that he came on board with utilizing Gary's contract in bringing him on board. There was some kind of other contract that was changed. You're referring to this 2002. Is that where his new title surfaced to the CEO of this port instead of executive director? Or is it the legislative change that you injected in his contract one on one with the chief executive officer.

Mr. Wilkinson (legal counsel) said the CEO title was changed in the By-Laws and approved by the full commission and I don't recall the date.

Mr. Ishmael said that's what I want. I would like to have a copy of Gary Pruitt's contract. I'd like to have a copy. Roger's first contract was based on that contract. Shortly thereafter, his raises were coming into the contract and then there was another contract that Roger wound up that I think brought him into this one and I think that is where CEO was injected in it that the Commission did vote on. I would like to have a copy of this contract you have in front of you even though it is wrong and it's coming out and it's been drafted I'd like to see what's in it.

Mr. Richard said Calvin, we'll just give you a copy of all of the contracts. I think that's the easiest way.

Mr. Ishmael said I think all of the Commissioners need to have a copy of it then we can look at where it was, what it went to, where it is today, and then we can look at changes, and it kind of gives us a better view of it.

Mr. Johnson said first of all, there is surely a big difference in what Mr. Richard thinks is monetary and what I think is monetary. In fact, every time you take comp time, and you get paid your regular salary, and you don't use annual leave or sick leave, there are four ways you can take off. You can take off sick leave, annual leave, comp time, or leave of absence. So, when you take that day off and you get paid for it, for a comp time day, which I don't agree with comp time period, but since he's charged us for it, he got paid, his check wasn't docked, and it was charged to comp time. That is monetary. You got paid for that day. Now, everyone has looked and reviewed all of the comp time that Mr. Richard has sent us, has charged us, and it is all overtime, and what I've seen is it's lunches, travel, civic duties. Every time that there is a function, we get charged comp time. What we're going to vote on today, surely someone will make a motion, is that do you agree with the comp time that Mr. Richard has charged us. Do you agree with paying him overtime for all the civic duties that he does? And, all the board meetings. Today, if this would have been last month, we would be charged comp time, overtime. If you're going

to do an up or down vote, do you agree with those hours charged. He said grandfathered, since I've got it, I've looked at it, I'm here to tell you, I'm not going to be a part of it. Not me. I'm not going to be part of it because I disagree if you go to Ruth's Chris or you go to Juban's, if you go to the state capitol, if you go to any function, to the chamber, that goes with your job. We've been charged overtime. Comp time is overtime. He has used 315 hours I think last year, 300 hours the year before. He hasn't used any of his annual leave but three days and that was in 1998 since he's been here. I've got a problem with, and look, it's against any state rule that when a person sets their own schedule it is an absolute no-no of drawing comp time. He says that he has the same contract as Mr. Pruitt. Mr. Pruitt drew 16 hours in eight years of comp time. Mr. Richard put the comp time in. That's his policy. Look at it, in 1998, no hours, in 1999, right on down the line. To the tune of over 3,000 hours in seven years, six years, that we've been charged for. You have a record of two years, 1,052.00 hours. I think I'm correct on that I don't have my stuff in front of me. For shopping on a Sunday, Mr. Richard charged us for going get a ship, I don't know if it's a picture or what, four hours on a Sunday for comp time. What are you going to vote for today? Are you going to pay him for that? That happened last year.

Mr. Tillis said are you sure about that Larry?

Mr. Johnson said I'm positive. Who's got the records? Give me the records. I'm absolutely sure. He went shopping on a Sunday. He charged us four hours. I think there's a tune of fifty-something hours on a travel going to Belgium, twenty hours going there, twenty hours coming back and every function that night was charged four or six hours. I expect my CEO not to charge me a dime of travel. And I think that as we go into committee, we'll ask for other, I've seen these on overtime, I want to see the rest of them. I want to see. But, you're going to vote on this whether you want to pay for that. If you want to pay overtime for these board meetings, overtime at the restaurants, overtime at the chamber, and every other function. Every function has been on overtime. All of ya'll have seen it. I hope ya'll have read it and looked at every receipt.

Mr. Dragg said what I think what we ought to do now being that it was a misunderstanding with Roger in the contract as far as the built up comp time, if you're willing to give it up, why don't you get back with Mr. Carter and ya'll work out a contract and have it ready for the next meeting.

Mr. Richard said I'm totally willing to talk to him.

Mr. Johnson said I would like to make that motion, when we are reviewing, I want to look at a contract. Every time I've voted on a contract and I didn't look at it, I got myself in trouble. Because when it says, you know, like at the last meeting, I said I want it clear for us to understand our contract with Mr. Richard where it says any benefits of any port director. How about the port director in New Orleans, they want to give him \$20,000 for a car expense instead of \$12,000 like we give him. We need to make that clear. Are all these just open-ended contracts to where. It's not clear. We need to make our contracts clear. I'd like to read it and I'd like to make a motion to try to send a direction of how does this Commission feel about comp time. I make a motion, we've already made a motion to stop all comp time. I make a motion to cancel all comp time that is on the books because of what was charged to us. First of all, we should not have been charged any comp, and second of all, I'm not going to sit here and vote on those charges. I make that a motion.

Mr. Wilkinson said I want clarification. Are we talking about for everybody or just for Roger?

Mr. Johnson said give me a legal opinion.

Mr. Wilkinson said I guess your question is can it be done for only one or does it have to be done for all. Is that the question?

Mr. Johnson said we are discussing Mr. Richard's contract, but give me an opinion.

Mr. Ishmael said we haven't seen any of the others have we?

Mr. Wilkinson said our position previously was that Mr. Richard accepts compensation for his staff, unclassified employees of his staff, and neither the Executive Committee nor the Commission took any action on whether it was his prerogative to do that.

Mr. Johnson said let me tell you what the most serious problem is. I don't agree with comp time. But, he has to authorize it. He can authorize their comp time. This guy is setting his own schedule and he takes this Board to authorize their comp time. You can't set your own schedule. Now, if he would have come to this Board and got the authorization, it would be good and it would go along with state policy. The state policy says you can't do it. You can't set your own schedule and set your own hours and charge comp time every time you want without any authorization. He is authorizing those guys comp time.

Mr. Wilkinson said I think Mr. Richard has authority to set policy eliminating comp time prospectively for all the staff members.

Mr. Richard said it is all gone.

Mr. Wilkinson said that is already done.

Mr. Richard said it is all gone for everybody. Nobody can get money.

Mr. Wilkinson said Larry has a motion. Would you repeat the motion for me please?

Mr. Johnson said let me go ahead and finish my argument. It's important to know the difference. The question was can we stop his comp time without stopping their comp time. I'm saying that our policy, when we do our policy, it should be anyone on salary shouldn't have comp time. But, the difference today with his comp time and their comp time is that his is not authorized. Theirs are. He authorized them.

Mr. Dragg said we don't know comp time they're charging.

Mr. Johnson said I want to know right now since it was asked, can we stop his comp time and not theirs.

Mr. Wilkinson said I want to repeat. Theirs has already been stopped.

Mr. Johnson said we're taking it off the books Mr. Wilkinson. They have comp time on the books also.

Mr. Richard said we can do that if that is the wishes of the Commission.

Mr. D'Agostino said is that legal?

Mr. Wilkinson (legal counsel) said is the question can you terminate Roger's without terminating the others. Is that the question?

Mr. Johnson said that is the question.

Mr. Wilkinson said or rescind it. Is that what I'm understanding?

Mr. Johnson said I have a motion, and the motion was questioned, can we do one without the other. My motion is, I just want to know if my motion is in order, I know my motion is in order, to stop, to remove the comp time, because that's what we're talking about, Mr. Richard's contract, to stop all comp time that's on the books, what Mr. Richard has charged us, due to the fact that I'm not comfortable with the hours that he's charged us for and the explanation. Statewide there is a policy on compensatory time for salaried people. I agree with, I think Mr. Joe, with people with Mr. Roger's salary, that they surely shouldn't have any comp time with all these lunches, board meetings, and civic duties. They should fall under that duty of his job. I want to take his comp time that he's being charged because first, they weren't authorized, and they are not legit as far as I'm concerned.

Mr. Ishmael said I second your motion. Mr. Carter, on this comp time, this Board never voted on any of this comp time. If something tells us we had no control over it, we weren't aware of it, very much like a lot of the business at this port has been run for the past several years. The Commission was sometimes the last people to find out what was happening, who you were dealing with. It would only be brought to this Board after negotiations, contracts, or lease agreements have been worked out. I think this comp time deal is falling into the same category. The Commission was not aware of it. Therefore, I second the motion.

Mr. Wilkinson said the motion is to rescind Mr. Richard's accumulated comp time.

Mr. Johnson said that's my motion.

Mr. Wilkinson (legal counsel) said I would like to have to opportunity because if it doesn't come up now it's going to come up later. I've not yet been able to answer Mr. Johnson's question. I would like to. I believe that it can be done. You can rescind one without the other. In an earlier opinion, which was given to Roger and a copy to the president, the question was asked of me can you terminate the comp time of Mr. Richard without also terminating the comp time given to essentially the other unclassified employees. If it is classified employees, nobody can. That is all controlled and regulated by the Civil Service Commission. So, all of my comments deal with unclassified employees. At the time I did that, no thought or consideration was given as to what the definition of benefits was. My opinion was that they could not, the full Commission, could not terminate Mr. Richard's without thereby also terminating the other unclassified employees. Since that time, I've done some additional research and talked to the attorneys for the Civil Service Commission, and there is no, we are not aware of any definitive case, statute, or direct materials that answers the question. But that attorney's opinion and mine were both the

same that comp time, and that is why I made the statement earlier, that comp time is more a factor of salary and wages than it is of benefits. And, if it is a factor of salary and wages, then Mr. Richard can be treated differently than the other unclassified employees. To the extent it is considered a benefit, then there can be no distinction. If a benefit is given or taken from Mr. Richard, it is my opinion that the same thing would have to be done to the other unclassified employees. My opinion is, and the attorney for the Civil Service Commission, and it was an informal opinion, it was certainly not a formal opinion. I was not aware that I would ultimately have to answer that question but I expected that I might so that is why I looked into it further. No one asked me to look into it directly and I did not charge for it. But I felt like I needed to be prepared to answer this question if it came up, and it has.

Mr. Richard said with the discussion about comp time with me and everybody else is based on the first opinion. Now we have Barry's opinion and we can sit and talk about it.

Mr. Wilkinson said that is definitely correct and I have not shared this with anybody.

Mr. Dragg said I have a substitute motion to the last motion. Not that I'm against what you have said Larry, but until we can get this thing hashed out, I would like Mr. Carter and Mr. Richard to sit down now and they have agreed to just about everything that Larry wanted. So, let them meet again and bring us back a package where it is right before us a final draft of his contract and we will clear it up all once and for all.

Mr. D'Agostino seconded Mr. Dragg's motion.

Mr. Wilkinson said it is a substitute motion. Is there a discussion on the substitute motion?

Mr. Johnson said I have a discussion on the substitute motion. Bully, they have had that discussion.

Mr. Ishmael said can I ask a question.

Mr. Wilkinson said Larry has the floor right now, and then I'm going to call on you.

Mr. Johnson said they have had that discussion. Mr. Wilkinson is of the opinion, I think, that they met together and said that he was grandfathered in .

Mr. Wilkinson said no, no.

Mr. Dragg said no, that's not what he said. He said it never came up in their discussion.

Mr. Johnson said wait a minute. That they agreed, I think, I may be wrong, I think I heard that Mr. Richard said that they agreed that his comp time was going to move forward and his comp time would be grandfathered in.

Mr. Wilkinson said we only talked about prospectively.

Mr. Johnson said what did you say Mr. Richard awhile ago.

Mr. Richard said we basically talked about, simply discussed. But, it was based on the opinion Barry first gave.

Mr. Johnson said but still, their words, when they came to this meeting tonight, they were in the opinion of that we were going to move forward. That's what they agreed to. I'm saying that we, this is an easy one Bully. Do you want to send a message? Do you agree with the comp time? Instead of just beating this old horse back again and going through the same conversation again is that I think everyone should have their mind made up whether they agree with the comp time and the comp time that he has on the books instead of coming back over here and we're going to beat it up again.

Mr. Dragg said don't worry about the other things.

Mr. Johnson said all the other stuff, we're going to come back. I'm like you. I want to see a contract. I want to send that direction to Mr. President and Mr. Richard of what this Commission thinks where they need to be on the right track and go through a lot of negotiations for nothing. Now, it's important, that this Commission, you've gotten the information, now it's time to vote on do you like it, to paying for it or not.

Mr. Wilkinson said speaking for myself, I've gotten the message.

Mr. Dragg said I would like withdraw my substitute motion, let's go ahead and vote on it.

Mr. D'Agostino said I withdraw my second.

Mr. Ishmael said I would like to clarify something. As I understand this thing Mr. President, you and Roger met. This was what you and Roger were discussing and ya'll were going to try to put a new contract together for Roger. That's what Barry has in front of him.

Mr. Wilkinson said that's right. A new contract.

Mr. Ishmael said in this committee that you set up last week, isn't that part of the obligations or the duties that were going to come before this committee.

Mr. Wilkinson said not the contract. No.

Mr. Ishmael said we are going to review his contract.

Mr. Wilkinson said yes, we're going to review his contract.

Mr. Ishmael said if you come with a new contract, then we're not reviewing his contract, we're reviewing a new one, right?

Mr. Wilkinson said right, you will be reviewing a new one.

Mr. Ishmael said we will be reviewing a new contract.

Mr. Wilkinson said that's correct. I didn't appoint that committee with the idea in mind that that committee would negotiate a contract.

Mr. Ishmael said not negotiate. It was brought up with us at that last meeting when you set that committee up was there was several things we wanted to look at. Comp time was one.

Look at his duties. We wanted to review his in place contract as I understand it. Am I wrong? Did that not come up in that meeting where we set this committee up? We were going to review his contract and his duties. This is the only problem I have of sitting on this committee, I mean, then we're not going to review what's already in place, that is to be questioned here around this table. This would be something new.

Mr. Wilkinson said to the extent that there is going to be any questions about specific items of performance, hours, expenses, anything like that, you would have to review those in view of the contract in effect at that time. So, if you have questions about any timesheets, or expense accounts, you would have to look at those under the contract that is in place today.

Mr. Ishmael said right now.

Mr. Wilkinson said right. But, we're talking about putting a new contract in place going forward.

Mr. Delpit said I have a point of argument that I think takes precedence over anything else that ya'll are talking about. First of all, I seconded the motion at that last meeting, at that committee meeting, and I understood Mr. Johnson's motion was because, admirably, Mr. Richard said that look, I'm not going to off my comp time. I'm not going to charge anymore for this. His motion was, and I seconded it, because I understood, that at this next regular meeting of our Board, that there would be a report made after ya'll have discussion, as what we were going to do with the previous comp time. And, if that was the motion, and that's what I seconded, then this discussion should be on whether or not ya'll have first of all done anything to resolve it and if you haven't, then I think Mr. Johnson's motion is in order just the way it is. But, your committee should do all the research that it needs to do. If you committee decides that after reviewing it, well maybe we should give Mr. Richard some comp time, and have some limitations on it, then your committee can do that. But, I think for the purpose of this meeting, we have one item that we should be voting on and that's his motion or a substitute. That's my point but I don't know what legal counsel thinks about it.

Mr. Wilkinson said basically what you're saying is that you support Mr. Johnson's motion.

Mr. Delpit said I'm asking whether or not, we're having a discussion about things that should not even be tied into this motion that he made.

Mr. Wilkinson said the substitute motion has been withdrawn and seconded. So, we are now going to vote on the original motion which was to rescind Mr. Richard's accumulated comp time. That's the motion, and that's what has been seconded. All those in favor say I. All opposed. The motion passes.

Mr. Johnson said just for clarification, ya'll are going to come back with either the committee or an agenda item to come back with a contract that we all can review and we can do that after committee or we can do it as an agenda item.

Mr. Wilkinson said we are going to send them out. There is only one item to negotiate and I think we're going to get that done pretty quick. Then we will have the contract drafted.

Mr. Johnson said I still want to repeat from the last meeting and the meeting before to make it absolutely clear that benefits of all port directors, that language and that paragraph, exactly what it means, and ya'll come up where Mr. Richard, explain to me exactly what that means and what disagreement there is. It's very broad and I just want it to where we all can understand that contract we're looking at and then review in red exactly what it means and not be so broad where we don't have these discussions of exactly what his contract says.

Agenda Item 15 - Financial Report

Mr. Starns gave the monthly financial report and all Commissioners were provided copies. He opened the floor to questions. None were asked.

Agenda Item 16 - Report by Attorneys

Mr. Wilkinson (legal counsel) said the state Attorney General's Office recently came out with an opinion that had a very important potential impact on the Greater Baton Rouge Port Commission as well as all port commissions in the state. That opinion was No. 04-0276, issued under letter of February 22, 2005. Mr. Richard has called to our attention, I think it came up at PAL or somewhere.

Mr. Richard said the Governor's Office.

Mr. Wilkinson (legal counsel) said the Governor's Office contacted Mr. Richard and then Mr. Richard asked us to get involved and to track it. The essence of the opinion is that port authorities throughout the state, deepwater and other, do not have the authority to lease the water bottoms within its jurisdiction. What that means is anything below the low water mark on the river here is by definition is considered a state water bottom and the state does not have the authority, excuse me, the Port Commission, under that opinion, does not have the authority to charge lease for it. This impacts virtually every port because virtually every port is on a waterway of some sort. The idea is to form, with the lack of a better word, a taskforce, of the various port authorities, led primarily by the deepwater ports, to ask the Attorney General's Office to reconsider that opinion and we felt like they maybe didn't consider all of the statutes that are out there and certainly the positions of the various ports. What we would like to do is adopt a Resolution asking the Attorney General to reconsider that opinion in light of what input we would like to supply to it. That is the essence of the Resolution we have prepared for adoption. Since we are asking for the Resolution to be adopted, I think you probably need to have a vote to add it to the agenda.

Mr. Wilkinson said is that the end of your discussion.

Mr. Wilkinson (legal counsel) said that is the end of my presentation. I'll answer any questions.

Mr. Johnson moved to add the item to the agenda, Mr. Ishmael seconded the motion, and the item was added to the agenda.

Mr. Johnson moved for the adoption of the Resolution, Ms. Robertson seconded the motion, and the Resolution was adopted.

Agenda Item 17 - Other matters

Nothing was reported.

Agenda Item 18 - Adjournment

The meeting adjourned at 6:28.

Secretary: _____ President: _____

Date accepted: _____